

Personal Affairs

Family Support, Child Custody, and Paternity

**Headquarters
Department of the Army
Washington, DC
1 November 1994**

UNCLASSIFIED

SUMMARY of CHANGE

AR 608-99

Family Support, Child Custody, and Paternity

This regulation sets forth Army policy on financial support of family members, paternity, and child custody. This revision--

- o Implements the transfer of proponent responsibility for this regulation from the Office of the Deputy Chief of Staff for Personnel to the Office of The Judge Advocate General (para 1-4).
- o Authorizes The Judge Advocate General (TJAG) to approve exceptions to this regulation.
- o Consolidates the obligations of soldiers under this regulation in one chapter (chap 2) and command guidance for responding to inquiries under this regulation into a separate chapter (chap 3).
- o Provides detailed guidance on the release of information from personnel records in response to inquiries under this regulation (para 3-2).
- o Consolidates command guidance on briefing soldiers about the requirements of this regulation into one chapter (chap 5).
- o Provides guidance to general court-martial convening authorities on assigning installation responsibilities for monitoring compliance with this regulation (para 1-4d(2)).
- o Establishes specific responsibilities for the Chief, Legal Assistance Division, Office of The Judge Advocate General, and staff judge advocates for disseminating and updating standard form letters and fact sheets (utilizing the Legal Automation Army-Wide System (LAAWS)) to commanders for use in responding to inquiries under this regulation (paras 1-4b and g and 1-10).
- o Outlines the role of attorneys providing legal assistance to clients on legal problems and needs relating to the subject areas of this regulation (para 1-9).
- o Implements Department of Defense Directive 5525.9, ''Compliance of DoD Members, Employees, and Family Members Outside the United States with Court Orders,'' 27 December 1988, with regard to soldiers and their family members stationed or residing outside the United States on court-related requests for assistance arising from financial support, child custody and visitation, paternity, and related cases (chap 4).
- o Establishes specific responsibilities for battalion commanders with regard to soldiers involved in repeated or continuing violations of this regulation (para 1-4e).

- o Provides legal authority for terminating a soldier's military assignment outside the United States, consistent with other military requirements, when such assignment adversely affects the legal rights of others in financial support, child custody, or paternity cases (paras 1-4c, d, e, and f, 1-5e, and 3-10b).
- o Establishes procedures whereby battalion commanders may release soldiers from the financial support and child custody requirements of this regulation under specified circumstances (paras 1-4, 2-10, and 2-11).
- o Authorizes a battalion commander to release a soldier from any requirement of this regulation when that requirement is based on an order issued by a court clearly without jurisdiction (para 2-11b(1)).
- o Authorizes a battalion commander to release a soldier from certain financial support requirements of this regulation when a court order is silent on the issue of financial support, when the income of a supported spouse exceeds the military pay of the soldier, when a supported spouse has abused the soldier, when the supported family member is in jail, or when a supported child is in the custody of another who is not the lawful custodian (para 2-11b(2) through (6)).
- o Substitutes a definition of military pay in place of gross pay with regard to a battalion commander's determination as to whether a soldier may be released from the financial support requirements of this regulation when the income of the supported spouse exceeds that of the soldier (para 2-11 and glossary).
- o Authorizes soldiers, under specified circumstances, to provide financial support for their family members by directly paying their non-government housing expenses; the so-called "support-in-kind" option. (para 2-7).
- o Deletes previous chapters on paternity claims, adoption proceedings, U.S. citizenship determinations on children born out of wedlock in a foreign country, procedures governing non-active duty or discharged personnel, basic allowance for quarters, garnishment, and involuntary allotments by eliminating this information from, or incorporating it elsewhere in the regulation.
- o Removes a commander's authority to order financial support beyond that required by this regulation.
- o Eliminates DA Form 5460-R (Request for Help in Receiving Support and/or Identification Cards for Family Members).
- o Eliminates the requirement for a commander to ask a soldier, in response to a paternity inquiry, to provide a signed statement admitting or denying paternity and stating his intentions.
- o Consolidates examples of regulatory requirements on financial support, child custody and visitation, paternity and related matters (app B).

Effective 1 December 1994

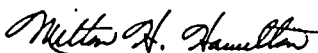
Personal Affairs

Family Support, Child Custody, and Paternity

By Order of the Secretary of the Army:

GORDON R. SULLIVAN
General, United States Army
Chief of Staff

Official:



MILTON H. HAMILTON
Administrative Assistant to the
Secretary of the Army

History. The original form of this regulation was first published on 15 November 1978. It was completely revised on 4 November 1985 and updated on 22 May 1987. This UPDATE printing publishes a revision of this latter publication. Because the publication has been extensively revised, the changed portions have not been highlighted.

Summary. This regulation prescribes Army policy on financial support of family members, child custody and visitation, paternity, and related matters. It also implements Department of Defense Directive 5525.9, "Compliance of DoD Members, Employees, and Family Members Outside the United States with Court Orders," 27 December 1988, with regard to soldiers and their family members stationed or residing outside the United States on court-related requests for assistance arising from financial support, child custody and visitation, paternity, and related cases.

Applicability.

a. This regulation applies to—

(1) All members of the Active Army, including cadets at the U.S. Military Academy.

(2) All members of the U.S. Army Reserve on active duty pursuant to orders for more than 29 days.

(3) All members of the Army National Guard on active duty pursuant to orders (under Title 10, U.S. Code) for more than 29 days.

(4) Family members who are command sponsored and reside outside the United States.

(5) Soldiers receiving full or partial pay and allowances while confined at the U.S. Disciplinary Barracks or other confinement facilities.

b. Paragraphs 2-5 and 2-9 of this regulation are punitive with regard to soldiers. A violation of either paragraph is separately punishable as a violation of a lawful general regulation under Article 92, Uniform Code of Military Justice. Penalties for violating either of these paragraphs include the full range of statutory and regulatory sanctions, both criminal and administrative. These and other provisions of this regulation may also be the basis for a commissioned, warrant, or noncommissioned officer to issue a lawful order to a soldier.

c. Provisions of this regulation regarding compliance with court orders on financial support, child custody and visitation, paternity, and related matters apply to family members who are command sponsored and reside outside the United States. Noncompliance with such orders may adversely affect their continued entitlement to command sponsorship or the duration of their sponsor's military assignment outside the United States.

d. This regulation applies during mobilization.

Proponent and exception authority.

The Judge Advocate General is the proponent of this regulation. The Judge Advocate General has the authority to approve

exceptions to this regulation that are consistent with controlling law and regulation. The Judge Advocate General may delegate the authority to approve exceptions in writing to a division chief within the proponent agency in the grade of colonel, or the civilian equivalent.

Army management control process.

This regulation is not subject to the requirements of AR 11-2. This regulation does not contain internal control provisions.

Supplementation. Supplementation of this regulation and the establishment of command or local forms are prohibited without prior approval from the Legal Assistance Division, Office of The Judge Advocate General, 2200 Army Pentagon, Washington, DC 20310-2200.

Interim changes. Interim changes to this regulation are not official unless they are authenticated by the Administrative Assistant to the Secretary of the Army. Users will destroy interim changes on their expiration dates unless sooner superseded or rescinded.

Suggested Improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to the Legal Assistance Division, The Judge Advocate General, 2200 Army Pentagon, Washington, DC 20310-2200.

Distribution. Distribution of this publication is made in accordance with the requirements on DA Form 12-09-E, block number 2235, intended for command levels A, B, C, D, and E for the Active Army, Army National Guard, and U.S. Army Reserve.

*This regulation supersedes AR 608-99, dated 4 Nov 1985 and rescinds DA Form 5460-R (Feb 87).

Contents (Listed by paragraph and page number)

Chapter 1

General, page 1

Purpose • 1-1, *page 1*
References • 1-2, *page 1*
Explanation of abbreviations and terms • 1-3, *page 1*
Responsibilities • 1-4, *page 1*
Policy • 1-5, *page 3*
Penalties • 1-6, *page 4*
Entitlement to military allowances • 1-7, *page 4*
Availability of remedies based on court order • 1-8, *page 4*
Role of legal assistance attorneys • 1-9, *page 5*
Legal Automation Army-Wide System (LAAWS) • 1-10, *page 5*
Records • 1-11, *page 5*

Chapter 2

The Legal Obligations of Soldiers, page 5

Section I

General, page 5
Obligations to geographically separated family members • 2-1, *page 5*
Obligations in response to paternity inquiries • 2-2, *page 6*

Section II

Obligations to Provide Financial Support to Family Members, page 6
Financial support by agreement • 2-3, *page 6*
Financial support required by court order • 2-4, *page 6*
Punitive provisions regarding financial support • 2-5, *page 7*
Financial support required in the absence of a written financial support agreement or court order • 2-6, *page 7*
Form and timing of financial support payments • 2-7, *page 8*

Section III

Obligations regarding Child Custody and Visitation, page 9
General • 2-8, *page 9*
Punitive provisions regarding child custody • 2-9, *page 9*

Section IV

Release from Specific Regulatory Requirements, page 9
General • 2-10, *page 9*
Situations warranting release from regulatory requirements • 2-11, *page 10*

Chapter 3

Command Responses to Inquiries, page 11

General • 3-1, *page 11*
Release of information • 3-2, *page 12*
Questioning soldiers • 3-3, *page 12*
Counseling and related actions • 3-4, *page 13*
Standard requirements for all replies • 3-5, *page 13*
Financial nonsupport inquiries • 3-6, *page 14*
Paternity inquiries • 3-7, *page 15*
Child custody inquiries • 3-8, *page 16*
Other inquiries • 3-9, *page 16*
Enforcement • 3-10, *page 16*

Contents—Continued

Chapter 4

Requests for assistance from government officials based on court orders, *page 17*

General • 4-1, *page 17*

Content of a request for assistance • 4-2, *page 18*

Responding to a request for assistance • 4-3, *page 18*

Requests for delay and exceptions • 4-4, *page 19*

Other actions • 4-5, *page 19*

Chapter 5

Command Briefings, *page 19*

General • 5-1, *page 19*

Content of Briefing • 5-2, *page 19*

Related actions • 5-3, *page 20*

Appendixes

A. References, *page 21*

B. Examples of paternity cases, *page 22*

Figure List

Figure 1: Pro-rata share equation, *page 7*

Glossary

Index

Reproducible Forms

RESERVED

Chapter 1

General

1-1. Purpose

a. This regulation sets forth Department of the Army (DA) policy, responsibilities, and procedures on financial support of family members, child custody and visitation, paternity, and compliance with court orders regarding these and related matters.

b. This regulation is designed to improve procedures for enforcing financial support, child custody, paternity, and related obligations within DA. It preempts all other regulations on these matters within DA. This regulation should not be construed to create any right, benefit, or entitlement, substantive or procedural, enforceable at law or in equity, by a party against the United States, its agencies, its officers, or any other person.

c. This regulation shall not be construed to create any right to judicial review involving the compliance or noncompliance with this regulation by the United States, its agencies, its officers, or any other person.

1-2. References

Required and related publications and prescribed and referenced forms are listed in appendix A.

1-3. Explanation of abbreviations and terms

Abbreviations and special terms used in this regulation are explained in the glossary.

1-4. Responsibilities

a. The Judge Advocate General (TJAG) promulgates all Army policies on—

(1) The obligation of soldiers to provide financial support to their family members.

(2) The obligation of soldiers to comply with court orders on financial support, child custody and visitation, paternity, and related matters.

(3) The obligation of family members who are command sponsored and reside outside the United States to comply with court orders on financial support, child custody and visitation, paternity, and related matters.

(4) The scope and nature of legal assistance services provided to soldiers and their family members on financial support, child custody and visitation, paternity, and related matters.

(5) The handling and processing of all requests for assistance from government officials based on court orders pertaining to soldiers or family members stationed or residing outside the United States. (See chap 4.)

(6) The handling and processing of all other inquiries received under this regulation.

b. The Chief, Legal Assistance Division, Office of the Judge Advocate General (OTJAG), will—

(1) Establish procedures for handling, processing, and responding to the following:

(*a*) All requests for assistance from government officials based on court orders pertaining to soldiers or family members stationed or residing outside the United States. (See chap 4.)

(*b*) All other inquiries received under this regulation.

(2) Process all requests for assistance from government officials based on court orders, and all other inquiries under this regulation, received at Headquarters, Department of the Army (HQDA), pertaining to soldiers or family members.

(3) Carry out the objectives of this regulation to protect the interests of the Army and the legal rights and interests of each soldier and family member whose conduct is governed or affected by this regulation.

(4) Advise and assist HQDA agencies, commanders, staff judge advocates (SJAs), judge advocates, and DA civilian attorney employees on all matters addressed by this regulation.

(5) Implement policies regarding the scope and nature of legal assistance services provided to soldiers and their family members on financial support, child custody and visitation, paternity, and related cases.

(6) Provide SJAs with standard form letters and fact sheets to respond to inquiries received, and to initiate inquiries under this regulation pertaining to soldiers and family members within and for the commands each SJA serves.

c. The Commanding General, U.S. Total Army Personnel Command, (PERSCOM) will implement and assist commanders with the enforcement of the policies of this regulation in all actions relating to the assignment of officer and enlisted personnel when consistent with other military requirements. (See paras 1-5*e* and 3-10*b* and *e*.)

d. General Court-Martial Convening Authorities (GCMCAs) will—

(1) Respond to all requests for assistance from government officials based on court orders, and all other inquiries received under this regulation. (See chaps 3 and 4.)

(2) Establish procedures within their commands, when necessary, to respond to requests for assistance from government officials based on court orders, and all other inquiries received under this regulation, particularly from geographically separated family members. (See para 2-1.) This regulation does not designate, nor require that any particular staff element within a command monitor compliance with this regulation. Because of the variations in staffing and missions among commands and installations, the following considerations will be taken into account before any decision is made to shift this or any related responsibility to the SJA:

(a) Each inquiry received under this regulation will be routed to the responsible commander in the most expeditious manner possible. Ordinarily, the routing and monitoring of actions and correspondence within a command is a function of the G-1 or Directorate for Community and Family Activities.

(b) Any proposed shift in responsibility will be designed to enhance the efficiency and speed with which inquiries received under this regulation are processed and handled.

(c) No responsibility will be shifted without a commensurate shift in required resources (for example, personnel, facilities, computer hardware, direct or indirect access to location information).

(d) Conflicts of interest and similar considerations may preclude SJA involvement in handling inquiries under this regulation on behalf of the command. The handling of inquiries on behalf of the command may also preclude legal assistance to the soldiers concerned. All this is particularly true on small installations. (See para 1-9.)

(3) Authorize SJAs or other staff officers (for example, Director of Community and Family Activities, the post Adjutant General), as appropriate, to initiate official messages (using priority precedence) or other official inquiries (that is, for the commander) to units located within other commands to obtain information or to request assistance under this regulation for geographically separated family members.

(a) Such messages or other inquiries may be drafted by an attorney providing legal assistance on behalf of a client whose complaint about a matter addressed by this regulation appears to be valid, but only after the client has waived the attorney-client privilege with regard to the release of information necessary to send the message. The message will be sent as an official command message, and not on behalf of the client. The reply, when received, will be provided to the SJA. Subject to the provisions of paragraph 3-2, the SJA will then release information from this reply to the client or the client's attorney, as appropriate.

(b) Formats and additional directions for sending official command messages and other official inquiries are contained within the Legal Automation Army-Wide System (LAAWS). (See para 1-10.)

(4) Establish procedures to ensure that subordinate commanders and soldiers within their commands are thoroughly familiar with the provisions of this regulation. (See chap 5.)

(5) Take other actions, as appropriate, in enforcing the provisions of this regulation. (See para 3-10.)

e. Battalion commanders will—

(1) Respond to all requests for assistance from government officials based on court orders, and all other inquiries received under this regulation. (See chaps 3 and 4.)

(2) Establish procedures to ensure compliance with this regulation.

(3) Ensure that subordinate commanders and soldiers within their commands are thoroughly familiar with the provisions of this regulation. (See chap 5.)

(4) Monitor compliance with this regulation and actions taken in response to inquiries under this regulation.

(5) Counsel soldiers and take other actions, as appropriate, in response to all inquiries received under this regulation. (See para 3-4.)

(6) Sign replies to inquiries received under this regulation pertaining to soldiers involved in repeated or continuing violations of this regulation. (See chaps 3 and 4 for the required content and timeliness of all replies.)

(7) Determine, when requested to do so by a soldier under his or her command, whether a specific provision of this regulation releases that soldier from a requirement of this regulation. (See para 2-10.)

(8) Take other actions, as appropriate, in enforcing the provisions of this regulation. (See para 3-10.)

f. Company commanders will—

(1) Respond to all requests for assistance from government officials based on court orders, and all other inquiries received under this regulation. (See chaps 3 and 4.)

(2) Ensure that soldiers are thoroughly familiar with the provisions of this regulation. (See chap 5.)

(3) Establish procedures to ensure compliance with this regulation.

(4) Counsel soldiers and take other actions, as appropriate, in response to all inquiries received under this regulation. (See para 3-4.)

(5) Sign replies to inquiries received under this regulation except to inquiries routed to superior commanders pertaining to soldiers involved in repeated or continuing violations of this regulation. (See para 1-4e(5) and chap 3.)

(a) All replies will conform to the provisions of chapters 3 and 4 with regard to timeliness and content.

(b) The battalion commander of a soldier will be informed of any inquiry alleging a repeated or continuing violation of this regulation.

(c) A draft reply will be submitted to the battalion commander for signature with regard to a soldier involved in repeated or continuing violations of this regulation.

(6) Forward with recommendation to the battalion commander any request by a soldier to be released from a specific provision of this regulation. (See paras 1-4e(7) and 2-10.)

(7) Take other actions, as appropriate, in enforcing the provisions of this regulation. (See para 3-10.)

g. Staff judge advocates (SJAs) will—

(1) Provide legal advice to commanders on:

(a) The application of this regulation, and other laws and regulations, to financial support, child custody and visitation, paternity, and related cases arising under this regulation.

(b) The disposition of requests from soldiers to be released from specific provisions of this regulation. (See paras 1–4 e(7) and 2–10.)

(c) Potential actions under the Uniform Code of Military Justice (UCMJ), and on other possible adverse actions, with respect to violations of the punitive provisions of this regulation, and violations of lawful orders issued to enforce this regulation.

(d) The type of information that may be released in replies to inquiries. (See para 3–2.)

(2) Provide legal interpretations of this regulation to:

(a) Commanders and members of their staffs.

(b) Attorneys providing legal assistance.

(3) Provide commanders and members of their staffs with standard form letters and fact sheets to respond to inquiries under this regulation pertaining to soldiers or family members within their commands. (See para 1–10.)

(4) Provide, when staff and other resources are available, attorneys to provide legal assistance to soldiers and family members on legal problems and needs relating to financial support, child custody and visitation, paternity, and related matters. (See para 1–9.)

1–5. Policy

a. The Army has an interest in the welfare of both soldiers and their family members. This is recognized by numerous laws and military programs authorizing the following:

(1) Government family housing.

(2) Living and travel allowances.

(3) Medical care and legal services.

(4) Child care and youth development services.

(5) Child and spouse abuse prevention services.

(6) Morale, welfare, and recreation services.

b. Because of military duty, soldiers and their family members often reside in states other than those in which they are domiciled. Frequently, they reside outside the United States. This often places them beyond the judicial process of state courts.

c. The Army recognizes the transient nature of military duty. This regulation, however, prohibits the use of a soldier's military status or assignment to deny financial support to a soldier's family members or to evade court orders on financial support, child custody and visitation, paternity, and related matters.

d. Soldiers are required to manage their personal affairs in a manner that does not bring discredit upon themselves or the United States Army. This responsibility includes—

(1) Maintaining reasonable contact with family members so that their financial needs and welfare do not become official matters of concern for the Army. (See para 2–1.)

(2) Conducting themselves in an honorable manner with regard to parental commitments and responsibilities. (See chap 2.)

(3) Providing adequate financial support to their family members. (See paras 2–3 through 2–7.)

(4) Complying with all court orders. (See paras 2–2, 2–4, and 2–9.)

e. All commanders, and those on their staffs, at every level of command in the Army, have a responsibility, when consistent with other military requirements, to ensure that any action, or failure to take action on their part does not encourage or facilitate violations or continuing violations of court orders or this regulation by soldiers and their family members.

(1) The policies of this regulation will be enforced in a timely and effective manner in all actions relating to the assignment of officer and enlisted personnel when consistent with other military requirements.

(2) Before recommending approval of requests for, or extensions of, military assignments outside the United States, commanders, and others responsible for making decisions on these matters, will consider whether the soldier's assignment, or continued assignment, outside the United States will adversely affect the legal rights of others in pending or anticipated court actions in the United States against the soldier, or against a soldier's family member, or will result in a repeated or continuing violation of an existing state court order or this regulation.

f. The policies of this regulation regarding financial support, child custody and visitation, paternity, and related matters are solely intended as interim measures until such issues are resolved in court or settled by agreement among the parties involved.

g. Soldiers are entitled to the same legal rights and privileges in State courts as civilians. This regulation is not intended to be used as a guide by courts in determining any of the following:

(1) The existence or amount of a soldier's financial support obligations.

(2) The existence or extent of a soldier's child custody or visitation rights.

- (3) The existence or extent of a soldier's rights or obligations in adjudicating paternity claims.

1-6. Penalties

Personnel subject to the UCMJ who fail to comply with paragraphs 2-5 or 2-9 are subject to punishment under the UCMJ, as well as to adverse administrative action and other adverse action authorized by applicable sections of the United States Code or federal regulations. Paragraphs 2-5 and 2-9 are fully effective at all times, and a violation of either paragraph is separately punishable as a violation of a lawful general regulation under Article 92, UCMJ, even in the absence of a prior complaint from a family member or counseling by a commander. These paragraphs and other provisions of this regulation may also be the basis for a commissioned, warrant, or noncommissioned officer to issue a lawful order to a soldier. Penalties for violations of the cited provisions of this regulation, and orders issued based on these and other provisions of this regulation, include the full range of statutory and regulatory sanctions. (See also para 3-10.)

1-7. Entitlement to military allowances

a. The financial support requirements of this regulation, in the absence of a court order or written support agreement, are stated in amounts equal to either of the following based on the soldier's pay grade:

- (1) BAQ-WITH: An amount equal to BAQ at the with dependents rate.
- (2) BAQ-DIFF: An amount equal to the difference between BAQ-WITH and BAQ at the without dependents rate (BAQ-WITHOUT).

b. A soldier's entitlement or lack of entitlement to BAQ-WITH, BAQ-WITHOUT, or BAQ-DIFF has no relationship to a soldier's obligation under this regulation to provide financial support to family members. Except as provided in paragraphs 2-11b (2), (3), (4), and (5), the actual receipt or nonreceipt of BAQ-WITH, BAQ-WITHOUT, or BAQ-DIFF also has no relationship to that obligation.

c. Where a soldier's entitlement to BAQ-WITH or BAQ-DIFF is based solely on the financial support the soldier provides to a family member, the soldier's entitlement to this allowance is only authorized if the monthly financial support provided by the soldier is at least the amount of BAQ-DIFF. The Defense Finance and Accounting Service (DFAS) may cancel a soldier's entitlement to BAQ-WITH or BAQ-DIFF and recoup past payments of BAQ-WITH or BAQ-DIFF when a soldier's monthly financial support is less than BAQ-DIFF regardless of the current residence of the supported family member, or, if the supported family member is a child, regardless of the soldier's marital status when the child was born. (Department of Defense Military Pay and Allowances Entitlements Manual (DoDPM), Interim Change 34-93, effective 5 Aug 1993.)

d. Soldiers who comply with the DoDPM in providing the required amount of financial support may receive BAQ-WITH even if the court order is silent on support or releases the soldier from the responsibility of supporting the family member. Normally, a soldier is not entitled to BAQ-WITH on behalf of a former spouse or stepchildren after the divorce. BAQ-WITH is not authorized when the soldier or the supported family is residing in government family housing. Also, if two soldier-parents are providing financial support to the same child, only one soldier is entitled to BAQ-WITH.

e. A soldier entitled to BAQ-WITH OR BAQ-WITHOUT may be entitled to variable housing allowance (VHA). In addition, a soldier may be entitled to other allowances based on duty assignment and location. A soldier's entitlement to, or receipt of VHA and other such allowances has no relationship to his or her obligations under this regulation.

1-8. Availability of remedies based on court order

a. Family members may use the following remedies to enforce court orders requiring financial support from soldiers:

(1) *Garnishment.* Section 659, title 42, United States Code (42 USC 659) authorizes a soldier's military pay, or military retired pay, to be garnished in order to enforce court-ordered financial support obligations for child support or alimony. With regard to soldiers assigned for duty within the Federal Republic of Germany (FRG), an FRG court may garnish a soldier's military pay if it acquired jurisdiction—

(a) Consistent with the provisions of Article 32 of the North Atlantic Treaty Organization (NATO) Supplementary Agreement for Germany.

(b) Pursuant to personal service by a U.S. Marshall in accordance with the Hague Convention on Service Abroad of Judicial or Extrajudicial Documents in Civil or Commercial Matters of 15 November 1965 (20 UST 361).

(c) By virtue of the soldier voluntarily appearing before the court in person or through counsel.

(2) *Involuntary allotment for child support and alimony.* In the absence of a garnishment order, 42 USC 665 authorizes an involuntary allotment from an active duty soldier's military pay and allowances to enforce court-ordered financial support obligations when the soldier has failed to make court-ordered child support, or court-ordered child support and alimony payments for two months, or in a total amount equal to, or in excess of, that amount for two months. Also, the failure to make such payments must be established by a notice to DFAS from an agent, attorney, or other authorized official of a State having in effect a plan approved under part D of title IV of the Social Security Act

(42 USC 651–664), who has the duty or authority under the plan to seek recovery of the financial support owed, or from a court or agent of the court that has authority to issue an order against the soldier for financial support of a child.

b. The availability of these and other remedies to a family member, based on an existing or potential court order or other basis, has no relationship to a soldier's obligations under this regulation, or to a commander's responsibility to enforce the provisions of this regulation.

1–9. Role of legal assistance attorneys

a. Pursuant to AR 27–3, attorneys providing legal assistance may assist soldiers and their family members on legal problems and needs involving financial support, child custody and visitation, paternity, and related matters. Unless otherwise authorized by AR 27–3, paragraph 2–5, a person pursuing a paternity claim against a soldier, or a child born out of wedlock before paternity is established or formally acknowledged, is not entitled to legal assistance. Exceptions or variations from client eligibility requirements may be authorized pursuant to AR 27–3, paragraph 1–4*b*(3) or *g* (3).

b. An attorney providing legal assistance may not assist both spouses involved in a domestic dispute, or both parties involved in any dispute over financial support, child custody or visitation, paternity, or related matters. Attorneys from the same Army legal office may be precluded in certain instances from providing legal assistance to both parties. (See AR 27–26, app B, Rule 1.10 and AR 27–3, para 4–9 as to Army policies on the avoidance of conflicts of interest by, and imputed disqualification of attorneys providing legal assistance.)

c. The rules regarding conflicts of interest and imputed disqualification may also prevent a particular attorney from providing legal advice to a commander, or a member of the commander's staff, on the requirements of this regulation in certain cases. However, this prohibition would not prevent an attorney who is properly providing legal assistance to a client from advocating that client's position to the appropriate commander. The attorney has the responsibility to inform the commander of the attorney's role in situations where such a distinction may not be clear to the commander. (See AR 27–3, para 3–7*c*(2) and *d*(2) on the requirement to avoid inaccurate or misleading statements.)

1–10. Legal Automation Army-Wide System (LAAWS)

a. The Chief, Legal Assistance Division, OTJAG, will utilize the Legal Automation Army-Wide System (LAAWS) to provide SJAs with fact sheets and standard form letters and other correspondence for use by the following:

(1) Commanders and members of their staffs for responding to inquiries under this regulation pertaining to soldiers, or their family members.

(2) Attorneys providing legal assistance on behalf of clients.

b. SJAs will adapt LAAWS fact sheets and standard form letters and other correspondence to local needs, and incorporate applicable law and other information where appropriate. SJAs will make these standard form letters and other correspondence and fact sheets available to commanders and members of their staff who respond to inquiries under this regulation.

1–11. Records

a. Files, records, and forms relating to this regulation do not include those maintained pursuant to AR 27–3, chapter 5, with regard to legal assistance client services. The maintenance and disposition of all such files, records, and forms are governed by that regulation, and those regulations cited therein.

b. The maintenance and disposition of all non-legal- assistance-client files, records, and forms relating to this regulation are governed by AR 25–400–2. The release of information to the public is governed by AR 27–40, AR 25–55, and AR 340–21. See also paragraph 3–2 of this regulation regarding the release of information in response to inquiries.

Chapter 2

The Legal Obligations of Soldiers

Section I

General

2–1. Obligations to geographically separated family members

a. Military service often requires soldiers to live separately from their family members. This is particularly true during periods when soldiers are permanently or temporarily assigned to locations outside the United States. Even during assignments within the United States, soldiers may be separated from their family members because of domestic disputes, or because of employment or financial considerations.

b. Soldiers must plan carefully for the financial support of their family members during such periods. If a married soldier has a basis for trust in the marital relationship, the soldier should establish joint accounts with his or her spouse in banks or other financial institutions in which all of or a portion of the soldier's military pay or savings are deposited, or provide a general or special power of attorney, if appropriate under the circumstances. If there is no basis for trust in

the marital relationship, a soldier should at least authorize voluntary allotments for family members in amounts that comply with the minimum requirements of this regulation for financial support.

c. Soldiers are expected to keep reasonable contact with their family members, as well as with others who have a legitimate need to know of their location, so as to minimize the total number of inquiries to their commanders and other Army officials on financial support, child custody and visitation, paternity, and related matters. Within the parameters of the law, soldiers will, whenever possible, resolve all such matters so as to not make any of these personal problems official matters of concern for their commanders or other Army officials. When this is not possible, soldiers should promptly seek legal advice from an attorney providing legal assistance, or from a civilian lawyer in private practice.

2-2. Obligations in response to paternity inquiries

a. Soldiers will comply with the financial support provisions of court orders arising from paternity cases to the same extent that they are required under this regulation to comply with court orders directing the financial support of family members. (See paras 2-4 and 2-5(1).) In the absence of a court order identifying a soldier as the father of a child and directing financial support, a male soldier has no legal obligation under this regulation to provide financial support to a child alleged to have been born to him and the child's mother out of wedlock. (See app B, para B-1 for an example.)

b. A soldier who admits paternity and agrees to provide financial support may, under certain circumstances, obtain BAQ-WITH.

c. Even if a soldier admits paternity and agrees to provide financial support, a soldier may terminate financial support at any time for any reason in the absence of a court order. However, in this instance, a soldier, who is receiving BAQ-WITH based solely on the financial support provided on behalf of the acknowledged child will immediately notify the appropriate finance and accounting office (FAO) so that excess BAQ payments to which the soldier is not entitled may be stopped.

Section II

Obligations to Provide Financial Support to Family Members

2-3. Financial support by agreement

a. *Oral financial support agreement.* It is not the Army's policy to involve itself in disputes over the terms or enforcement of oral financial support agreements. Where an oral agreement exists and is being followed, the Army need not and will not interfere. When a dispute arises, the Army will require compliance only with the provisions of this regulation. Thus, if a family member complains that a soldier is not sending an agreed-upon amount that is less or more than the amount of financial support required by paragraph 2-5, the commander will advise the soldier to send the agreed-upon amount. If the soldier refuses to do so, the commander will direct the soldier to send the amount of financial support required by paragraph 2-6 (in the absence of a court order or a written financial support agreement to the contrary). (See app B, para B-2 for examples.)

b. *Written financial support agreement.* If the parties have a signed written financial support agreement, then the amount of financial support specified in such an agreement controls. (See app B, para B-3 for examples.)

(1) If a written agreement is silent on an amount of financial support, then the financial support requirements of paragraph 2-6 apply (in the absence of a court order or another written financial support agreement to the contrary).

(2) If, after a written financial support agreement is signed, a court grants a divorce to the parties signing the agreement, the financial support agreement will not be enforced under this regulation unless the agreement has been approved, ratified, or incorporated within the divorce decree. In cases where the divorce decree does not approve, ratify, or incorporate a prior written financial support agreement of the parties the following applies:

(a) A soldier is not required to provide financial support to a former spouse unless required to do so by court order.

(b) A soldier is not required to provide financial support to his or her children, beyond the amount required in paragraph 2-6, unless required to do so by court order. (See also, para 2-10.)

(3) With regard to a written financial support agreement that has not been approved, ratified, or incorporated within a divorce decree, a family member may, depending on the applicable rules of law, seek a court judgment for arrearages resulting from a soldier's breach of the agreement, or specific performance of the agreement with regard to future payments due.

2-4. Financial support required by court order

a. Soldiers will comply with the financial support provisions of all court orders. (See paras 2-4 and 2-5a (1). See also app B, para B-4 for examples.)

b. A soldier is not required by this regulation to comply with a foreign court order on financial support except in the following situations:

(1) The foreign court order has been recognized and enforced by a court within the United States; or

(2) The United States has agreed in a treaty or international agreement to honor valid financial support orders

entered by the courts of a particular foreign nation. (For the purpose of this provision, this regulation enforces court orders on financial support issued by FRG courts with regard to soldiers assigned for duty within the FRG.)

c. Nevertheless, a soldier who fails to comply with the financial support provisions of a foreign court order, regardless of whether it is enforced by this regulation, does so at his or her own peril. This is particularly true if the soldier is within the jurisdiction of the foreign court, or if the foreign court order is later recognized and enforced by a court within the United States.

d. With regard to the financial support provision of a foreign court order entered by a court of a nation whose orders the United States has not agreed to recognize, or that has not been recognized and enforced by a court within the United States, a soldier is in compliance with this regulation if he or she is providing financial support in an amount required by the foreign court order, or by this regulation, whichever is less.

e. The failure of a soldier to comply with a financial support or related provision of a court order (for example, provision of a court order directing a division of property or payment of a particular expense) may also be the basis for a lawful order from a commander to comply with such provision.

2-5. Punitive provisions regarding financial support

a. Soldiers will not violate any of the following:

- (1) The financial support provision of a court order.
- (2) The financial support provision of a written financial support agreement in the absence of a court order.
- (3) The financial support requirements of paragraph 2-6 in the absence of a written financial support agreement or a court order containing a financial support provision.

b. This paragraph is punitive in nature. (See para 1-6.) Commanders are responsible for the enforcement of this paragraph. (See para 3-10.)

c. A soldier cannot fall into arrears without violating this regulation. A soldier who falls into arrears by violating subparagraph a(1), (2), or (3) above may be punished accordingly. Punishment in such instances is based on failure to provide financial support when due, not for failure to pay arrearages. Although the collection of arrearages based on violations of subparagraphs a(1) and (2) above may be enforced in court, there is no legal means for the military to enforce collection of arrearages based on violations of subparagraph a(3) above. Nevertheless, in all cases, soldiers should be encouraged, but not ordered to pay arrearages.

2-6. Financial support required in the absence of a written financial support agreement or court order

a. *Application.* This paragraph applies in the absence of a written financial support agreement or a court order containing a financial support provision, and until such an agreement is signed or such an order is issued.

b. *Pro-rata share.* Under this paragraph, when the term “pro-rata share ” is used with regard to BAQ-WITH, the amount of each such share of BAQ-WITH is calculated using the following equation:

$$\text{pro-rata share} = \frac{1}{\text{total number of supported family members}} \times \text{Applicable rate of BAQ-WITH}$$

Figure 1. Pro-rata share equation

c. *Calculation.* The “total number of supported family members ” in the denominator of the foregoing fraction includes all family members (regardless of residence) except the following:

- (1) A soldier’s former spouse, regardless of whether the soldier is providing financial support to the former spouse.
- (2) A soldier’s present spouse who is on active duty in one of the military services, unless financial support is required by a court order or written financial support agreement. (See para 2-6d(4).)
- (3) A family member for whom the soldier is not required to provide financial support under this regulation, or for whom the soldier has been released by his or her battalion commander from the regulatory requirement to provide financial support pursuant to paragraph 2-11.

d. *Single family units.* (See app B, para B-5 for examples.)

- (1) *Family unit not residing in government family housing.* The soldier will provide financial support in an amount equal to the soldier’s BAQ-WITH to the family unit.

(2) *Family unit residing in government family housing.* While the soldier's family members are residing in government family housing, the soldier will provide BAQ-DIFF to the family unit. When the supported family member(s) move(s) out of government family housing, the soldier will provide BAQ-WITH.

(3) *Family members within the family unit residing at different locations.* The soldier will provide a pro-rata share of BAQ-WITH to each family member not residing in government family housing and BAQ-DIFF for the remaining family members of the family unit residing in government family housing.

(4) *Soldier married to another person on active duty in one of the military services.* In the absence of a written financial support agreement or a court order containing a financial support provision, a soldier is not required to provide financial support to a spouse on active duty in one of the military services. With regard to a soldier's child or children (from that marriage or a prior marriage) a soldier will provide the following financial support in the absence of a written financial support agreement or a court order containing a financial support provision:

(a) If the soldier does not have custody of any children, the soldier will provide BAQ-DIFF to the military member having custody of the child or children.

(b) If the soldier has custody of one or more children, the soldier is not required to provide financial support for a child or the children in the custody of the other military member.

e. Multiple family units. (See app B, para B-6 for examples.)

(1) A soldier will provide financial support for each family unit and family member in the manner indicated in paragraph 2-6a, b, c, and d.

(a) Family members covered by court orders will be provided financial support in accordance with those court orders.

(b) Family members covered by written financial support agreements will be provided financial support according to those agreements.

(c) Family units residing in government family housing which are not covered by either a court order or a financial support agreement will be provided BAQ-DIFF.

(d) Each family member not residing in government family housing who is not covered by a court order or a financial support agreement will be provided a pro-rata share of BAQ-WITH.

(2) A written financial support agreement or a court order containing a financial support provision covering one or more family units or members does not affect the amount of financial support required under this regulation for the financial support of those family units or members not covered by such agreement or order. (See the example at app B, para B-6a.)

2-7. Form and timing of financial support payments

a. Unless otherwise required by court order or by a written financial support agreement, a financial support payment will be made in one of the following ways:

- (1) Cash.
- (2) Check.
- (3) Money order.
- (4) Electronic fund transfer.
- (5) Voluntary allotment.
- (6) Involuntary allotment.
- (7) Garnishment (or wage assignment).

b. Unless otherwise required by a court order or by a written financial support agreement, a financial support payment made in cash will be personally delivered to the adult family member concerned, or to the adult having custody of the child concerned, not later than the first day of the month following the month to which the financial support payment pertains. Soldiers making cash payments should obtain a receipt or other proof that the payments were made. (See paras 2-10b and 3-6 b(2)(b).)

c. Unless otherwise required by a court order or by a written financial support agreement, a financial support payment by check or money order, not personally delivered in accordance with paragraph 2-7b, will be deposited in first class mail with proper postage affixed and addressed to the adult family member concerned, or the adult having custody of the child concerned, not later than the date required for personal delivery in paragraph 2-7b.

d. As an exception to paragraph 2-7a, a soldier may comply with the financial support requirements of this regulation by directly paying non-government housing expenses on behalf of family members. The following restrictions apply:

(1) This provision does not apply to:

(a) Financial support required by a court order or by a written support agreement that does not explicitly authorize this type of financial support in kind.

(b) Non-government housing in which the supported family member, for whatever reason, is not presently residing.

(2) Non-government housing expenses are limited to:

(a) Rent.

(b) Real property taxes and property insurance due under an escrow agreement, and the principal and interest payments due on any outstanding loan secured by a mortgage on the non-government housing.

(3) Non-government housing expenses do not include expenses described in paragraph 2-7d(2) for which the soldier is not legally responsible by reason of contract, lease, or loan agreement. These expenses also do not include other housing costs, such as utility or cable television charges, regardless of whether or not the soldier is legally responsible for their payment.

(4) To the extent that the monthly financial support requirements of this regulation exceed the monthly non-government housing expenses paid by a soldier for his or her supported family members, payment for any shortfall will be made as required by paragraph 2-7a. To the extent that the monthly non-government housing expenses paid by a soldier exceed the monthly financial support requirements of this regulation, no credit is authorized under this regulation for any financial support payment due—

(a) In any subsequent month; or

(b) For the same month with regard to any family member residing elsewhere.

e. All other financial support in kind, such as payments made relating to non-government housing expenses not included in paragraph 2-7d(2), automobile loans and insurance, or charge accounts, made to others on behalf of supported family members requires the written approval of the supported family members in order to be credited as indicated in paragraph 2-7 d.

Section III

Obligations regarding Child Custody and Visitation

2-8. General

a. Applicable state laws may prohibit a parent, even in the absence of a court order, from removing a child under certain circumstances, from the state in which the child is residing without the permission of the other parent.

b. Soldiers will comply with the provisions of all applicable court orders and laws regarding child custody and visitation, and related matters, regardless of the age of the children concerned. The punitive provisions of paragraph 2-9, however, apply only to violations relating to unmarried children under the age of 14 years. Nevertheless, a soldier who disobeys a court order on child custody, regardless of the age of a child, may be subject to civil and criminal sanctions by civil authorities. The content of a court order on child custody may also be the basis for a lawful order from a soldier's commander. (See para 3-8b(2)(e).)

2-9. Punitive provisions regarding child custody

a. A soldier relative who is aware that another person is a lawful custodian of an unmarried child under the age of 14 years will not wrongfully—

(1) Abduct, take, entice, or carry the child away from the lawful custodian; or

(2) Withhold, detain, or conceal the child from the lawful custodian.

b. The fact that joint legal custody of a child has been awarded to both parents by a court does not preclude violation of this paragraph by a soldier parent who is not authorized physical custody of that child by a court order, or who is authorized visitation with that child by a court order.

c. A soldier relative is a soldier who is the parent, step-parent, grandparent, brother, sister, uncle, aunt, or one who has at some time in the past been the lawful custodian of the child.

d. It is a defense to a violation of this paragraph that the soldier at the time of the offense was authorized to have physical custody of the child to the exclusion of others pursuant to a valid court order.

Section IV

Release from Specific Regulatory Requirements

2-10. General

a. Pursuant to paragraphs 1-4e(7) and 1-4f(6), a battalion commander may release a soldier under his or her command from specific requirements of this regulation in the situations listed in paragraph 2-11. A battalion commander may reconsider and change any decision under paragraph 2-11 made by him or her, or by a prior commander. No commander has authority to release a soldier from a requirement of this regulation in any situation not listed in paragraph 2-11.

b. A battalion commander must be satisfied by a preponderance of the evidence that one of the situations in paragraph 2-11 exists before that commander may release a soldier from a requirement imposed by this regulation.

(1) In appropriate cases, a battalion commander, or an officer acting in his or her behalf, should attempt to contact the affected family member for whatever additional information may be necessary to make an informed decision on this matter.

(2) A soldier has the burden of coming forward with sufficient information and documents (for example, tax returns, pay vouchers, court orders, written financial support agreements) to establish a basis for a battalion commander's

action under paragraph 2–11. This burden may also be met if, in reply to a personal letter or telephone call from the battalion commander, or an officer acting in his or her behalf, a spouse refuses to provide the documents in his or her possession that may support or rebut the soldier's claim.

c. A battalion commander has no authority to release a soldier from a requirement imposed by this regulation unless an SJA has advised that commander that a release is legally sufficient and complies with the requirements of this regulation and applicable laws, court orders, and written financial support agreements.

(1) Notwithstanding the nature of a commander's actions or SJA advice under this regulation, a soldier who fails to comply with the financial support, child custody or visitation, paternity, or related provisions of a court order does so at his or her own peril, even though the court may later be found to be without jurisdiction, after an appeal is taken or a successful collateral attack is made.

(2) A soldier may be arrested and charged with crimes by civil authorities for failing to comply with such provisions, or held in contempt of court. Nothing contained in this regulation affects the authority of civil courts to take such actions.

d. Except as provided in paragraph 2–11b (4) and (5), alleged or established desertion, adultery, or other marital misconduct, or criminal acts on the part of a spouse has no effect on a soldier's obligation to comply with the provisions of this regulation.

e. The authority of TJAG to approve exceptions under this regulation will not be applied in individual cases to release soldiers or their family members from their obligations under this regulation.

2–11. Situations warranting release from regulatory requirements

a. This paragraph, and this paragraph alone, lists those situations in which a battalion commander may release a soldier from certain specific requirements of this regulation. (See app B, para B–7 for examples.)

b. A battalion commander may release a soldier under his or her command from the cited provisions of this regulation in the following situations:

(1) *An order issued by a court without jurisdiction.* With regard to the regulatory requirement to comply with a court order regarding paternity (paras 2–2a and 2–5a(1)) or child custody (para 2–9 a), a battalion commander may release a soldier from either of these regulatory requirements if the court issuing the order clearly was without jurisdiction to do so. (See para 2–9 d.) A battalion commander may release a soldier from the regulatory requirement to comply with a court order regarding the financial support of family members (paras 2–4 and 2–5a(1)) if—

(a) The court issuing the order clearly was without jurisdiction to do so; and

(b) The soldier, with regard to those supported family members, at all times has been complying with any of the following: the financial support provisions of another court order; the financial support provisions of a written financial support agreement; or the financial support requirements of paragraph 2–6.

(2) *A court order without a financial support provision.* A court order without a financial support provision is one that contains no language directing or suggesting that the soldier provide financial support to family members on a periodic or other continuing basis. An order that directs only nominal financial support to family members on a periodic or other continuing basis is not silent. An order that directs financial support on a periodic or other continuing basis, but that does not mention an amount is not silent (for example, “John Jones will provide financial support to his children, Mary and James.”) Where financial support is directed, but an amount is not indicated in a court order, then the soldier will provide financial support in accordance with paragraph 2–6 (or as otherwise required by a written financial support agreement or by another court order). If, however, a court order is silent as to the obligation of a soldier to provide financial support to his or her family members, then the battalion commander may release a soldier from the regulatory requirement to provide financial support for those family members (that is, paras 2–4 and 2–5a) if each of the following is true:

(a) A judicial proceeding concerning the marriage (for example, legal separation, divorce, annulment) or a child or the children from that marriage (for example, for financial support, child custody, visitation) has been initiated.

(b) The court has personal jurisdiction over the soldier and the spouse or other person having custody of the children, and the authority to order financial support of the family members concerned.

(c) The court has issued one or more orders, none of which contains a financial support provision.

(d) There is no written financial support agreement or other court order requiring financial support of the family members concerned.

(e) The soldier is not receiving BAQ-WITH based solely on the financial support of the family members concerned.

(3) *The income of the spouse exceeds the military pay of the soldier.* This subparagraph authorizes a battalion commander to release a soldier from the regulatory requirement (under paras 2–5a(3) and 2–6) to provide financial support to his or her spouse, but not from the requirement to provide financial support to the children from that marriage. With regard to the regulatory requirement to provide financial support for a spouse, a battalion commander may release a soldier from this requirement if—

(a) The monthly income of the supported spouse exceeds the monthly military pay of the soldier; and

(b) The soldier is not receiving BAQ-WITH solely on the basis of providing financial support to that spouse.

(4) *The soldier has been the victim of a substantiated instance of physical abuse.* This subparagraph authorizes a

battalion commander to release a soldier from the regulatory requirement to provide financial support to his or her spouse (paras 2–5a (3) and 2–6), but not from the requirement to provide financial support to the children from that marriage. With regard to the regulatory requirement to provide financial support for a spouse, a battalion commander may release a soldier from this requirement if—

(a) An instance of physical abuse committed by the supported spouse against the soldier has been substantiated by either of the following:

1. A family advocacy case management team, acting pursuant to AR 608–18; or
2. A court as evidenced by a judgment amounting to a conviction or by the issuance of a permanent restraining order (or a temporary restraining order then in effect) against the supported spouse.

(b) The instance of abuse did not involve a mutual affray or an act of physical abuse by the soldier against his or her spouse (substantiated by a family advocacy case management team or court judgment or order).

(c) The soldier is not receiving BAQ-WITH solely on the basis of providing financial support to that spouse.

(5) *The supported family member is in jail.* This subparagraph authorizes a battalion commander to release a soldier from the regulatory requirement to provide financial support to a family member who is incarcerated in any penal institution, regardless of the reason for his or her incarceration. With regard to the regulatory requirement to provide financial support for family members (paras 2–5a (3) and 2–6), a battalion commander may release a soldier from this requirement as to a particular family member if—

(a) The family member presently is in jail; and

(b) The soldier is not receiving BAQ-WITH solely on the basis of providing financial support to the family member concerned.

(6) *The supported child is in the custody of another who is not the lawful custodian.* This subparagraph authorizes a battalion commander to release a soldier from the regulatory requirement to provide financial support to his or her child if the child is in the custody of another who is not the lawful custodian of that child. With regard to the regulatory requirement to provide financial support for family members (paras 2–5a(3) and 2–6), a battalion commander may release a soldier from this requirement as to a particular child if—

(a) The soldier is the lawful custodian of the child;

(b) The child, without the soldier’s consent, is in the custody of another who is not then the lawful custodian of the child; and

(c) The soldier is diligently pursuing legal means to obtain physical custody of the child.

Chapter 3

Command Responses to Inquiries

3–1. General

a. Inquiries received under this regulation shall be directed to the company commander of the soldier concerned. An inquiry alleging a repeated or continuing violation of this regulation will be referred to the battalion commander for appropriate action. Each inquiry under this regulation will be considered individually by the soldier’s company or battalion commander, as appropriate.

b. The person receiving an inquiry will acknowledge, by letter, or by telephone call followed by a confirmatory letter, the receipt of any inquiry that contains insufficient information upon which to base a reply. The acknowledgment should indicate the information that is needed before a complete reply may be provided. For example, if the person making the inquiry has provided insufficient information to identify the soldier who is the subject of the inquiry, the person making the inquiry should be asked to furnish the soldier’s social security number (SSN) or full name and present unit of assignment. If, on the other hand, there is a dispute over the terms of a separation agreement or court order, the family member should be asked to provide the agreement or order so that it may be reviewed.

c. The company commander will personally review each inquiry concerning a soldier assigned to his or her command. The commander will personally sign each written reply to an inquiry except those required to be signed by the battalion commander. (See para 1–4d(4).) The content and timing of the reply will comply with this chapter. (See paras 3–5 through 3–9.)

d. If the person who is the subject of the inquiry is not assigned to, or has been reassigned from the command receiving the inquiry, the company commander of the unit receiving the inquiry will forward the inquiry to the commander or department having authority to take action.

(1) If the inquiry concerns a soldier who has been reassigned, the inquiry will be forwarded to the company commander of the soldier’s new unit of assignment. Also, the company commander of the unit receiving the inquiry will inform the person making the inquiry within 14 days of its receipt that his or her inquiry has been forwarded. The person making the inquiry will also be informed of the soldier’s new unit of assignment and reporting date.

(2) Inquiries about persons other than active duty soldiers and their family members will be answered in the following manner:

(a) *Reserve, retired or discharged soldiers.* The person making the inquiry will be provided general information on the procedures to follow in locating the Reserve, retired, or discharged soldier and on resolving the matters raised in the inquiry.

(b) *Other military members.* Inquiries concerning military members of the Air Force, Navy, Marine Corps, or Coast Guard will be forwarded to the appropriate military department for reply.

3-2. Release of information

a. AR 340-21 contains the procedures for releasing information from personnel records. This paragraph contains additional guidance on releasing information in response to inquiries under this regulation.

b. Before being questioned or counseled in response to an inquiry under this regulation, soldiers will be given the opportunity to complete DA Form 5459-R (Authorization to Release Information from Army Records on Nonsupport/Child Custody/Paternity Inquiries). DA Form 5459-R will be locally reproduced on 8 1/2- by 11- inch paper. A copy for reproduction is located at the back of this regulation.

c. No information may be released from a soldier's personnel records without his or her consent except as follows:

(1) *To personnel within the Department of Defense (DOD) with an official need to know that information in the actual performance of their duties.* Information released to such officials will not be further disclosed except as authorized by AR 340-21 and this paragraph.

(2) *Pursuant to the written request of the head of a law enforcement agency.* The authority to make such a request on behalf of an agency head may be delegated, but Army officials will not accept a request signed below "section chief."

(3) *To Congress or a committee thereof.* (A request from an individual member of Congress does not fall within this category.)

(4) *Pursuant to an order from a court of competent jurisdiction.* The order must be signed by a judge; an order signed by an attorney, court clerk, case worker, or such other official is not acceptable.

(5) *In the case of a bona fide emergency affecting the health or safety of an individual.* In such a case the information released will be limited to that necessary to handle the emergency, and the official releasing the information should take all reasonable steps to verify the identity of the person making the request.

(6) *As otherwise required by the Privacy Act (5 USC 552a(b)).* The official acting on the request will obtain legal advice from the SJA prior to such release.

(7) *Information that would not constitute a "clearly unwarranted invasion of personal privacy."*

(a) While it is not possible to identify categorically all information that may be released from personnel files without an invasion of personal privacy, the following information generally may be released:

1. The soldier's full name, rank, duty status, and duty position.

2. The date and location of past and present duty assignments, and future duty assignments that have been officially established.

3. Officially scheduled separations, transfers, and retirements.

4. Office or duty addresses and telephone numbers.

5. *Gross salaries.* Although the fact that a soldier is receiving certain allowances (for example, BAQ-WITHOUT, BAQ-WITH) may be disclosed, the bases for these allowances should not. (See para 3-2c(7)(b).)

6. Awards, decorations, source of commission, promotion dates, and attendance at military schools.

(b) The following information generally may not be released:

1. Home addresses and telephone numbers.

2. Names of spouses, children, or other relatives.

3. Marital status, race, ethnic group, religion, or date of birth.

4. Social security number.

5. Height, weight, or physical or medical data.

(c) The official acting on a request will obtain legal advice from the SJA before releasing any information from a personnel file that deviates from the foregoing guidance or that includes facts from those files not discussed in this guidance.

d. A soldier may obtain access to information, pertaining to that soldier, contained in files, records, or forms maintained pursuant to this regulation. (See para 1-11.)

3-3. Questioning soldiers

a. When an inquiry under this regulation is received, the company or battalion commander, as appropriate, will counsel the soldier who is the subject of the inquiry.

(1) Since most inquiries provide a basis for suspecting a potential violation of this regulation, and therefore a violation of UCMJ, Art. 92 (which prohibits violations of lawful general regulations), soldiers should be advised of their rights under UCMJ, Art. 31 before they are questioned (or counseled) about such inquiries.

(2) The content of an inquiry may also provide a basis for suspecting a soldier of violating other punitive provisions

of the UCMJ. These suspected violations, for which an UCMJ, Art. 31 rights advisement should also precede any questioning, include, but are not limited, to the following:

- (a) False official statements, UCMJ, Art. 107.
- (b) Carnal knowledge, UCMJ, Art. 120.
- (c) Uttering a check without sufficient funds, UCMJ, Art. 123a.
- (d) Fraud against the United States, UCMJ, Art. 132.
- (e) Conduct unbecoming an officer, UCMJ, Art. 133.
- (f) Adultery, UCMJ, Art. 134.
- (g) Bigamy, UCMJ, Art. 134.
- (h) Wrongful cohabitation, UCMJ, Art. 134.
- (i) Dishonorably failing to pay debts, UCMJ, Art. 134.

(3) The content of an inquiry may also provide a basis for suspecting a soldier of violating applicable state laws that prohibit the abduction of children by a parent or the financial nonsupport of family members in violation of existing court orders. Since these laws may apply to soldiers under UCMJ, Art. 134 and Assimilative Crimes Act, section 13, title 18, United States Code (18 USC 13), soldiers suspected of such violations should first be advised of their rights under UCMJ, Art. 31 before questioning.

(4) Since this regulation provides a basis for ordering a soldier to take, or refrain from taking certain actions (for example, to initiate a voluntary allotment in response to previous violations of this regulation, to return a child to his or her lawful custodian), UCMJ, Art. 31 rights advisement should proceed any questioning of a soldier when the content of an inquiry provides a basis for suspecting a soldier of violating the order of a superior commissioned or noncommissioned officer under UCMJ, Art. 90 or 91 respectively.

b. If a soldier asserts his or her right to remain silent under UCMJ, Art. 31 the commander should refrain from questioning the soldier further and consider other available evidence before taking the actions required under this regulation.

3-4. Counseling and related actions

a. Upon receipt of an inquiry about an assigned soldier, the company or battalion commander, as appropriate, will inform the soldier about the nature of the inquiry.

b. Before responding to the inquiry, the commander will gather information to determine whether or not a violation of this regulation or other applicable laws has occurred. A commander will also question the soldier who is the subject of the inquiry. (See para 3-3.) Based on the information obtained from all sources, including, in appropriate cases, legal advice from the SJA, the commander will determine—

(1) The type of counseling, if any, the soldier should receive.

(a) At a minimum, the company or battalion commander, as appropriate, will counsel the soldier regarding any substantiated violation of this regulation and the soldier's legal obligations under this regulation. In counseling the soldier, the commander will explain the applicable provisions of this regulation and the actions the soldier must take to comply with this regulation.

(b) In appropriate cases, the commander may refer a soldier to an attorney for legal assistance.

(2) The content of orders or warnings, if any, to be given to the soldier to foster compliance with this regulation in the future.

(3) The type of action, if any, to be taken against the soldier based on any past or continuing violation of this regulation or applicable laws in the past. (See para 3-10 for a list of such actions and para 3-3a for a list of possible violations that may serve as a basis for those actions).

(4) The content of the reply to be made to the inquiry. (See paras 3-5b and 3-5 through 3-9.)

3-5. Standard requirements for all replies

a. The company or battalion commander, as appropriate, will provide complete and accurate information in a timely manner in reply to all inquiries under this regulation. (See paras 1-4 e(1) and 1-4f(1).)

(1) A reply will be sent in response to each inquiry within 14 days of its receipt by the responsible commander.

(2) Any local coordination requirement that may exist within a particular command should not delay the timeliness of a required reply.

b. Suggested formats for replying to inquiries, including formats for interim replies, may be obtained from the SJA.

c. Each reply to an inquiry will contain the specific information required by paragraphs 3-6 through 3-9, as appropriate, together with the following information:

(1) The name, rank, and organization of the commander who personally counseled the soldier who is subject of the inquiry, together with the following information regarding the commander:

(a) Postal mailing address (and message address if the reply is to a message).

(b) Commercial telephone number (and Defense Switch Network (DSN) telephone number if the reply is sent to a person within the military).

(2) Whether or not the soldier has been counseled regarding the subject of the inquiry. (If the soldier has not been counseled, an interim reply will be sent stating the reason why and indicating the date when such counseling will occur and the date when a final reply will be sent.)

(3) The date(s) the soldier was counseled.

(4) A statement as to whether or not the soldier has authorized the release outside the DOD of information obtained from a system of records. The soldier's decision regarding the release of information should be recorded on DA Form 5459-R.

(5) A statement as to whether or not the soldier admits that he or she has an obligation to take certain action under this regulation, and if so, the nature of that action, and if not, why not.

d. All replies to inquiries will also provide information that is helpful and responsive to all the questions asked to the extent that such information is releasable pursuant to paragraph 3-2. Replies to inquiries from family members, or persons or agencies acting on behalf of family members, should include advice on other courses of action (beyond enforcement of this regulation) that may be taken in obtaining the relief on the particular subject of the inquiry.

(1) Depending on the nature and source of an inquiry, family members may initially be advised to consult a legal assistance attorney, a lawyer in private practice, or a child support enforcement agency.

(2) Family members already receiving legal or other help may also be advised, depending on the nature of the relief being sought, that they may initiate legal actions in court to obtain child support, alimony, a division of marital property, child custody, or visitation, or to garnish military pay, or to have military pay and allowances involuntarily allotted.

(3) A commander will enforce this regulation against soldiers without regard to other courses of action that may be available to family members in obtaining the relief they are seeking. (See para 3-10.)

3-6. Financial nonsupport inquiries

a. The company or battalion commander, as appropriate, will provide complete and accurate information in a timely manner in reply to an inquiry alleging financial nonsupport on the part of a soldier. The commander will also take the actions required by this paragraph.

b. In replying to an inquiry alleging financial nonsupport the commander will provide the following information in addition to that required by paragraph 3-5:

(1) A statement as to whether the soldier admits that he or she has a financial support obligation to the family member in question, and if not, why not.

(a) If a soldier denies he or she has an obligation to provide financial support to a spouse or children for any reason, the commander will determine why the soldier believes he or she does not have a financial support obligation to the family member(s) in question.

(b) If a soldier is receiving BAQ-WITH and is not paying financial support to any other family member, the commander should notify the appropriate FAO so that excess BAQ payments to which the soldier is not entitled may be stopped and that excess BAQ payments to which the soldier was not entitled may be collected. (See para 1-7c.)

(c) In appropriate cases, the commander should recommend that the soldier talk with a legal assistance attorney if the soldier is mistaken or in doubt as to his or her obligation under this regulation.

(d) The commander should seek legal advice from the SJA (never from a legal assistance attorney) if in doubt as to the requirements or application of this regulation in a particular case.

(e) If the commander determines that the soldier has no financial support obligation under this regulation to the family member(s) in question, the commander should advise the person making the inquiry why no financial support is required. If, on the other hand, financial support is required, the commander should take the action indicated in paragraph 3-6b(3)(a) and (b).

(2) A statement as to whether or not the soldier admits that he or she failed to provide financial support as required by this regulation.

(a) If the soldier admits that he or she failed to provide financial support, the commander will provide a complete summary of the reason(s), if any, provided by the soldier for violating this regulation and the immediate steps that the soldier will take to comply with this regulation in the future. The commander should also take the action indicated in paragraph 3-6b (3)(a) and (b).

(b) If the soldier asserts that he or she has been providing financial support as required by this regulation, the commander should request the soldier to provide proof of such payments. Cancelled personal checks and leave and earnings statements (LESSs) reflecting voluntary allotments are acceptable proof. Postal or bank money orders receipts accompanied by a sworn statement from the soldier that the money orders were sent to the family member(s) are also acceptable. In appropriate cases, the commander should ask the soldier to present evidence indicating that the money orders were cashed by the family member(s) in question.

1. The commander should seek legal advice from the SJA if in doubt as to whether the soldier has presented enough proof to support his or her assertion that financial support payments were made.

2. The commander should provide a complete summary of the soldier's recent actions to the person making the inquiry that includes the dates and amounts of the checks or money orders sent, and to be sent to the family member,

or the voluntary allotment initiated on behalf of the family member; to include, the date the allotment was or will be initiated, the amount of the voluntary allotment, the effective date of the voluntary allotment, and the complete address of the payee. If a voluntary allotment will be initiated, the special arrangements that the soldier has made to provide immediate financial support during the interim period pending receipt of the first voluntary allotment check should be indicated.

3. If the commander determines that the soldier did not provide financial support as required by this regulation, the commander should take the action indicated in paragraph 3-6 *b*(3)(a) and (b).

(3) A statement as to whether the soldier has been ordered to comply with this regulation in the future.

(a) If a commander determines that the soldier has failed to comply with this regulation in the past, for whatever reason, or indicates any unwillingness to comply with this regulation in the future, the company or battalion commander, as appropriate, will order the soldier to comply with this regulation and advise the person making the inquiry of the details regarding that order. (See para 1-7*c*.) The order should specify—

1. That financial support is to be provided not later than a specified date (which will be not later than 30 days following receipt of the inquiry).

2. The exact amount of financial support to be provided (as required by this regulation) and the continuing nature of the financial support to be provided (for example, it will be provided each month).

3. The person(s) to whom the financial support is to be provided, including the address to which payment shall be sent.

4. The method of payment (for example, voluntary allotment, personal check, or money order).

(b) Regardless of the soldier's immediate response to the order, the commander should consider taking appropriate action against the soldier for past violations of this regulation. The commander should also make efforts to eliminate future or continuing violations. (See para 3-10.)

3-7. Paternity inquiries

a. The company or battalion commander, as appropriate, will provide complete and accurate information in a timely manner in reply to an inquiry alleging paternity on the part of a soldier. The commander will also take the actions required by this paragraph.

b. A commander will inform a soldier who is the subject of a paternity inquiry of his legal and moral obligations, if any, and refer him to an attorney for legal assistance if he has questions about his legal rights. A referral to legal assistance is appropriate regardless of whether the soldier admits paternity. A commander will urge the soldier to provide financial support to the child if, after legal consultation, the soldier admits paternity.

c. In replying to an inquiry alleging paternity, the commander will provide the following information in addition to that required by paragraph 3-5:

(1) In cases where a soldier refuses to answer questions about a paternity inquiry, denies paternity, or admits paternity but refuses to provide financial support, the reply to the inquiry will indicate this fact and inform the person making the inquiry that issues of paternity and financial support can only be resolved in a court having jurisdiction over the soldier.

(2) In cases where a soldier admits paternity and agrees to provide financial support, the reply to the person making the inquiry will reflect the soldier's response. The reply should also indicate the amount of financial support that will be provided to the child, together with the effective date and means of payment (for example, voluntary allotment, monthly check). The commander will also take the following actions:

(a) Assist the soldier in obtaining either BAQ-WITH or BAQ-DIFF, as appropriate, on behalf of the child if the soldier is not already drawing BAQ on behalf of another family member. The soldier must present the following proof to the FAO: proof of parentage (for example, a birth certificate, a sworn statement under oath), or proof that financial support is being provided to the child in a certain minimum amount (for example, a voluntary allotment, a statement under oath). (See para 1-7 *c*(2) as to the minimum amount of financial support required.)

(b) Assist the soldier in filing for a voluntary allotment for the child.

(c) Assist the soldier or mother of the child in obtaining a military identification card for the child (AR 600-8-14, sec V).

(d) Allow the soldier to take ordinary leave in order to marry the mother of the child, if leave is requested for this purpose. However, leave may be delayed if it will interfere with military requirements.

1. The expense of any travel, including travel to and from military installations located outside the United States, is the responsibility of the soldier.

2. If the marriage is to take place outside the United States, the soldier must comply with AR 600-240 and AR 608-61 in applying for authorization to marry. (DA Form 2029-R, Application for Authorization to Marry Outside of the United States is used for this purpose.)

(3) The commander will follow the procedures in paragraph 3-6b in responding to paternity inquiries in the following types of cases:

(a) Where a soldier's failure to provide financial support is in violation of a court order.

(b) Where a soldier has provided financial support for the child in the past, but, for whatever reason, has stopped providing financial support, or has decreased the amount of financial support being provided.

3-8. Child custody inquiries

a. The company or battalion commander, as appropriate, will provide complete and accurate information in a timely manner in reply to an inquiry about a child custody, visitation or related matter. The commander will also take the actions required by this paragraph.

b. In replying to an inquiry about child custody, visitation, or a related matter, the commander will provide the following information in addition to that required by paragraph 3-5:

(1) A statement as to whether the soldier admits that he or she, or someone acting on the soldier's behalf, has physical custody of the child(ren) in question.

(a) The commander will check any negative response to this question against other sources of information, such as the soldier's military records, government family housing records, and supervisors and friends.

(b) If the commander determines that neither the soldier nor someone acting in the soldier's behalf has physical custody of the child(ren) in question, the commander will inform the person making an inquiry of his or her determination.

(2) If the soldier or someone acting in his or her behalf has physical custody of the child(ren) in question, a statement as to the soldier's intention regarding the request to give up physical custody of, or to grant visitation with the child(ren).

(a) If a soldier denies having a legal obligation to give up physical custody of, or to grant visitation with the child(ren), the commander will determine why the soldier believes he or she does not have a legal obligation to do so.

(b) In appropriate cases, the commander should recommend that the soldier talk with a legal assistance attorney if the soldier is mistaken or in doubt as to his or her obligation under this regulation.

(c) The commander should seek legal advice from the SJA (never from a legal assistance attorney) if in doubt as to the requirements or application of this regulation in a particular case.

(d) If the commander determines that the soldier has no legal obligation under this regulation with regard to the request, the commander should advise the person making the inquiry why no such obligation exists.

(e) If the soldier has no legal right to physical custody of the child(ren), the commander will order the soldier to comply with this regulation and advise the person making the inquiry that the soldier has been ordered to return the child(ren) to his or her (their) lawful custodian. Regardless of the soldier's response to the order, the commander may take appropriate action against the soldier for violating this regulation, if such violation has occurred. (See paras 2-9 and 3-10.)

(f) Commanders will not take physical custody of a child. They will also not order a soldier to give up physical custody of a child to anyone other than the child's lawful custodian. (See para 3-9c with regard to a commander's actions in response to a soldier's wrongful refusal to grant visitation.)

3-9. Other inquiries

a. Soldiers and their family members are expected to obey the law, including court orders that enforce the law. Soldiers and their family members should comply with all provisions of court orders, including those granting or denying visitation, dividing marital property, providing access to medical care, and other such provisions.

b. Commanders should take appropriate action, including those listed in paragraph 3-10, when the noncompliance of a soldier or family member with such provisions becomes an official matter of concern within the Army. In particular, commanders will consider the actions listed in paragraph 3-10b(2) with regard to soldiers and family members stationed outside the United States who, without lawful basis, violate any provision of a court order.

c. A soldier who is the lawful custodian of a child should not be ordered to comply with a provision granting visitation to a noncustodial parent. Obtaining relief in such matters should be left to the courts. However, commanders will consider the actions listed in paragraph 3-10b(2) with regard to soldiers stationed outside the United States who, without lawful basis, deny visitation to noncustodial parents residing in the United States.

d. A reply to an inquiry on matters related to financial support, child custody, or paternity (for example, location of soldier or family member, visitation with child, payment of arrearages on court-ordered financial support, court-ordered blood tests) will, depending on the nature of the inquiry, follow the general guidance provided in paragraphs 3-5 through 3-8.

3-10. Enforcement

a. Commanders should seek the advice of the SJA on measures that may be taken to enforce compliance with, and punish violations of, this regulation under applicable Federal, state, or foreign laws. Commanders should also notify appropriate law enforcement authorities when apprehension or criminal investigation is warranted.

b. Commanders will ensure that actions they take enhance the enforcement of this regulation. Commanders will also avoid taking actions that enable or foster the efforts of soldiers to evade the requirements of this regulation or the application of laws or the enforcement of court orders addressed by this regulation.

- (1) In this regard, commanders will take lawful actions designed to:
 - (a) Eliminate repeated or continuing violations of court orders and this regulation.
 - (b) Ensure that financial support is provided to family members on a continuing basis in accordance with this regulation.
 - (c) Enable children to be returned to the parent or lawful guardian entitled to custody.
- (2) Outside the United States, the commanders, in their efforts to enforce compliance with this regulation, will, in addition to other measures, recommend or initiate actions in appropriate cases to—
 - (a) Terminate the command sponsorship of a civilian family member and order his or her advance return to the United States.
 - (b) Request host-nation authorities, in accordance with applicable international agreements and established procedures, to remove a civilian family member from the host nation. This measure will not be used without first revoking the civilian family member's command sponsorship and obtaining legal advice from the SJA. Release of the civilian family member to host-nation authorities must be coordinated with the SJA and military law enforcement authorities.
 - (c) Curtail or refuse to extend a soldier's military tour of duty outside the United States.
- c. Commanders will take appropriate actions against soldiers who fail to comply with this regulation or lawful orders issued based on this regulation. These actions include, but are not limited to, the following:
 - (1) Counseling.
 - (2) Admonition.
 - (3) Memorandum of reprimand for filing in a soldier's Military Personnel Records Jacket or Official Military Personnel File (AR 600–37).
 - (4) Bar to reenlistment (AR 601–280).
 - (5) Administrative separation from the service (AR 635–100 or AR 635–200).
 - (6) Nonjudicial punishment under UCMJ, Art. 15.
 - (7) Court-martial.
- d. Violations of the financial support requirements of paragraph 2–5 or the child custody provisions of paragraph 2–9 of this regulation may be charged as violations of UCMJ, Art 92. These and other provisions of this regulation may also be the subject of lawful orders issued by commissioned or noncommissioned officers. Failure to obey such orders may be charged as violations of UCMJ, Art. 90, 91, or 92, as appropriate. (See para 3–3a for a list of related violations that may serve as a basis for the actions listed in this paragraph.) The commander will consider the actions listed in paragraph 3–10 b(2) with regard to soldiers and family members residing outside the United States, who, without justification or excuse, avoid efforts on the part of others to resolve these issues in a U.S. court having jurisdiction.

Chapter 4

Requests for assistance from government officials based on court orders

4–1. General

- a. This chapter implements DOD Directive 5525.9, but only with regard to soldiers and family members stationed or residing outside the United States on requests for assistance from U.S. Federal, State, and local government officials based on court orders arising from financial support, child custody and visitation, paternity, and related cases. With regard to a family member residing outside the United States, this chapter applies regardless of whether or not the family member is command sponsored by the Army or one of the other military departments.
- b. This regulation does not apply to requests for assistance from government officials based on court orders concerning DOD or DA civilian employees who are not also family members. Guidance on responding to such requests should be obtained as follows:
 - (1) With regard to DA appropriated fund civilian employees and members of their families, guidance should be obtained from the servicing civilian personnel office (CPO) for the employee's command, or the Director of Civilian Personnel, Deputy Chief of Staff for Personnel, ATTN: DAPE-CPC, 300 Army Pentagon, Washington, DC 20310–0300, as appropriate.
 - (2) With regard to DA nonappropriated fund civilian employees and members of their families, guidance should be obtained from the servicing civilian personnel office (CPO) for the employee's command, or the Commander of the U.S. Army Community and Family Support Center, ATTN: CFSC-HR-P, 2461 Eisenhower Avenue, Alexandria, VA 22331–0523, as appropriate.
- c. This regulation also does not apply to requests for assistance concerning criminal offenses not arising from a financial support, child custody or visitation, paternity, or a related case. For example, a request for assistance on a criminal offense involving rape, carnal knowledge, or larceny is not governed by this regulation. Guidance on

responding to such requests should be obtained from the Director of Military Management, Deputy Chief of Staff for Personnel, ATTN: DAPE-MP, 300 Army Pentagon, Washington, DC 20310-0300. (AR 190-9 and AR 630-10.)

4-2. Content of a request for assistance

a. A request for assistance from a government official based on a court order is any request for help from a court, or a U.S. Federal, State, or local official, concerning a soldier or family member stationed or residing outside the United States who has been charged with, or convicted of, a felony in a court, has been held in contempt by a court for a failure to obey the court's order, or has been ordered to show cause why he or she should not be held in contempt for failing to obey the court's order. The felony, contempt, or order to show cause must arise from a financial support, child custody or visitation, paternity, or related case.

b. The request must be based on an order issued by a court of competent jurisdiction that appears valid on its face and is signed by a judge.

c. The request for assistance must request help, not just information from the Army. The help requested need not be realistic, warranted, or possible in order to require action under this chapter. Requests for assistance include, but are not limited to, requests for the following:

(1) Return of the soldier or family member to the jurisdiction of the court in question, or to any location within the United States, such as a port of entry.

(2) Reassignment of the soldier to any location within the United States.

(3) Curtailment of a military assignment outside the United States, or a denial of a request to extend the period of such an assignment.

(4) Removal of command sponsorship for family members, including removal from a position of employment with DA or one of the other military departments.

(5) Compliance by the soldier or family member with any court order.

d. An inquiry that is not from a government official or that is not based on a court order as described in this chapter will be handled in accordance with other applicable provisions of this regulation.

4-3. Responding to a request for assistance

a. A request for assistance requires action in accordance with this chapter as soon as it is received by HQDA, or a subordinate Army command or activity.

b. Any commander or SJA receiving or responding to a court-related request for assistance will promptly take the actions required by this chapter.

c. Consistent with mission requirements, applicable international agreements, ongoing military investigations, or courts-martial, commanders, in close consultation with their servicing SJAs, will—

(1) Afford the subject of the request the opportunity to provide evidence of legal efforts to resist the court order, or to otherwise show legitimate cause for noncompliance.

(2) Attempt to resolve the matter to the satisfaction of the court without the return, or other action affecting, the soldier or family member.

d. If the matter can not be resolved with the court without return of the subject to the United States, the following actions will be initiated or taken:

(1) If the subject of the request is a soldier; and

(*a*) If the request pertains to a felony, contempt, or order to show cause involving the unlawful or contemptuous removal of a child from the jurisdiction of a court or the custody of a parent or another person awarded custody by court order, the company commander will order the soldier (pursuant to UCMJ, Art. 14) to return expeditiously to an appropriate port of entry at Government expense, contingent on the party requesting return providing for transportation, and escort, if desired, of the soldier from such port of entry to the jurisdiction of the party requesting return. Absent unusual circumstances, the company commander will provide at least 10 days notice to the requesting party before the soldier's return to the selected port of entry. The company commander should authorize a military escort for the soldier to the port of debarkation when the requesting party is providing escort from the port of entry. The company commander will promptly report any action taken under this paragraph through command channels to his or her GCMCA. A request for exception from this requirement, together with supporting reasons, must be promptly forwarded for decision through the GCMCA in accordance with paragraph 4-4.

(*b*) If the request does not pertain to a felony, contempt, or order to show cause involving the unlawful or contemptuous removal of a child from the jurisdiction of the court, or the custody of a parent or another person awarded custody by court order, the company commander will forward the matter with recommendations to the GCMCA of the soldier for action. The GCMCA will evaluate the facts and circumstances of each particular case in consultation with his or her SJA. Following legal consultation, the GCMCA may, if he or she deems appropriate, order the soldier to return expeditiously to an appropriate port of entry in accordance with paragraph 4-3 *d*(1)(*a*).

(2) If the subject of the request is a family member, the company commander of the soldier involved will forward the matter with recommendations to the GCMCA of the soldier for action. The GCMCA will evaluate the facts and circumstances of each particular case in consultation with his or her SJA. Following legal consultation, the GCMCA, or

an officer acting on his or her behalf, will strongly encourage the family member to comply with the court order. If the family member fails to comply with the court order, the GCMCA, or other official, as appropriate, may take such actions as may be warranted by the situation, including but not limited to the following:

- (a) Withdrawal of command sponsorship if the family members of the soldier are command sponsored.
- (b) Adverse action, up to and including removal from the Federal service by a supervisor, if the family member is a DA civilian employee, and provided that the agency is able to demonstrate that the action taken is for such cause as will promote the efficiency of the service. A proposal to take such adverse actions must be worked through the appropriate CPO and coordinated with the SJA.
- (c) Curtailment of the soldier's military assignment outside the United States, or denial of a request to extend such assignment beyond the normal tour length for that assignment, or denial of a request to transfer to another assignment outside the United States, including cancellation of all such orders already published.
- e. A soldier is entitled to full transportation and per diem allowances if traveling pursuant to a contempt of court or show cause order, as described in this chapter and AR 614-11. However, this does not alleviate the requesting party's requirement to pay travel expenses from the appropriate U.S. port of entry. Any travel expenses received from the requesting party must be deducted from the soldier's entitlement to travel and per diem allowances. The soldier will be returned in a temporary duty (TDY) status, unless a permanent change-of-station (PCS) move is appropriate.
- f. A soldier may be authorized to return to the United States at his or her own expense in a leave status in order to resolve the matter, and should be encouraged to do so, if consistent with mission requirements, in the event the requesting party cannot or will not provide transportation to the soldier from the U.S. port of entry to the jurisdiction of the party.

4-4. Requests for delay and exceptions

- a. The GCMCA may request a delay in taking action (not to exceed 90 days) in order to afford the subject of the request for assistance a reasonable opportunity to provide evidence of legal efforts to resist the court order, or to otherwise show legitimate cause for noncompliance. The GCMCA must forward the request for delay (within 30 days of the date the request for assistance is first received) in accordance with paragraph 4-4c .
- b. The GCMCA will submit requests for delays and exceptions through the Legal Assistance Division, The Judge Advocate General, 2200 Army Pentagon, Washington, DC 20310-2200 to the Assistant Secretary of Army (Manpower and Reserve Affairs) (ASA(M&RA)), Washington, DC 20310-0111. ASA(M&RA) is the approval authority for all requests for delay. ASA(M&RA) will forward all requests for exception to the Under Secretary for Defense (Personnel and Readiness) (OSD(P&R)), 4000 Defense Pentagon, Washington, DC 20301-4000, with copies furnished to the General Counsel (GC), Office of Secretary of Defense (OSD), for approval. ASA(M&RA) also provides OSD(P&R) with a report (copies furnished to GC, OSD) of any action taken by ASA(M&RA) on a request for delay received pursuant to this chapter.

4-5. Other actions

A commander taking action under this chapter is not precluded from taking other actions warranted by the facts or circumstances of a particular case. These actions may include military justice and adverse personnel actions based on violations of the punitive provisions of this regulation or the UCMJ. (See para 3-10.)

Chapter 5 Command Briefings

5-1. General

Commanders will periodically brief soldiers on their obligations under this regulation. In addition, soldiers will also be briefed, to the extent warranted by their personal situations, on these obligations during mobilization training, while processing under the soldier readiness program (SRP) and for preparation for overseas movements (POR), and in conjunction with mobilization, deployment, and PCS.

5-2. Content of Briefing

- a. Commanders will seek assistance from SJAs on the scope and content of group or individual briefings given on the requirements of this regulation. SJAs may provide information papers and other materials to be used in informing soldiers of their obligations under this regulation and related laws.
- b. Briefings should include information on the following:
 - (1) A soldier's failure to provide financial support to family members on a monthly or otherwise continuing basis is a violation of this lawful general regulation and is punishable under the UCMJ. Violations may be punished even though they may have occurred before a family member makes an inquiry or the soldier has been individually counseled.

(2) A voluntary allotment is the preferred method of providing financial support to family members not residing with the soldier. The allotment should be in an amount no less than that required under this regulation.

(3) A soldier who takes a child or children (including stepchildren) to his or her next duty location station in violation of an existing court order is also violating this lawful general regulation. For such misconduct, a soldier may be punished under the UCMJ for violating this regulation, held in contempt of court and punished for violating the court order, and prosecuted and punished under an applicable state parental kidnapping statute. In addition, the soldier will likely be held responsible for paying the costs of returning any child wrongfully taken to the parent who is the lawful custodian.

(4) Soldiers and family members are required to comply with visitation and all other provisions of court orders.

(5) Each soldier or family member who is living apart from the other parent of his or her child or children, has a responsibility to work out realistic arrangements with the other parent, or to seek an amendment of an existing court order on financial support, child custody or visitation, paternity, or related obligations where strict compliance with the provisions of the existing court order may be impractical due to a change in circumstances or residence, or because of financial or other reasons.

5-3. Related actions

In addition to briefing soldiers periodically on the requirements of this regulation, commanders provide soldiers with the forms needed to initiate voluntary allotments during processing under the SRP and for mobilization, deployment, and PCS. Commanders will also ensure that voluntary allotment forms are promptly processed.

Appendix A References

Section I Required Publications

AR 27-3

The Army Legal Assistance Program. (Cited in paras 1-9*a*, *b*, *c*, and 1-11*a* .)

AR 27-26

Legal Services: Rules of Professional Conduct for Lawyers. (Cited in para 1-9*b*.)

Section II Related Publications

AR 20-1

Inspector General Activities and Procedures

AR 25-55

The Department of the Army Freedom of Information Act Program

AR 25-400-2

The Modern Army Recordkeeping System (MARKS)

AR 27-40

Litigation

AR 190-9

Absentee Deserter Apprehension Program and Surrender of Military Personnel to Civilian Law Enforcement Agencies

AR 340-21

The Army Privacy Program

AR 600-8-14

Identification Cards, Tags, and Badges

AR 600-37

Unfavorable Information

AR 600-240

Marriage in Overseas Commands

AR 601-280

Total Army Retention Program

AR 608-18

The Army Family Advocacy Program

AR 608-61

Application for Authorization to Marry Outside of the United States

AR 614-11

Temporary Duty (TDY)

AR 630-10

Absence Without Leave, Desertion, and Administration of Personnel Involved in Civilian Court Proceedings

AR 635-100

Officer Personnel

**Section III
Prescribed Forms**

DA Form 5459-R

Authorization to Release Information from Army Records on Nonsupport/Child Custody/Paternity Inquiries. (Cited in paras 3-2*b* and 3-5*c*(4).)

**Section IV
Referenced Forms**

DA Form 2029-R

Application for Authorization to Marry Outside of the United States.

**Appendix B
Examples of paternity cases**

B-1. Financial support in paternity cases (para 2-2)

a. Example 1. A soldier has acknowledged paternity of a child born out of wedlock. His acknowledgement consisted of his acts in authorizing the mother to place his name on the child's birth certificate as the father, and obtaining a military identification card for the child. There is no court order. The mother of the child has written the soldier's commander and asserts that the soldier is not providing financial support for the child. In response to his commander's questions as to why he is not providing financial support, he claims that he no longer believes he is the father of the child. Pursuant to paragraph 2-2*a* the soldier is not required by this regulation to provide financial support to the child in the absence of a court order requiring him to do so. The soldier's reasons for not providing financial support are irrelevant. However, if the soldier is assigned outside the United States, the commander (and military personnel officials) should take steps, if consistent with other military requirements, to ensure that the soldier's assignment outside the United States is not extended and that the soldier is not assigned to another duty assignment outside the United States. (See paras 1-4*c* and 1-5 *e*(2).) Pursuant to paragraphs 3-6*b* (1)(b) and 3-7*c*(3), the commander should contact the appropriate FAO to ensure that the soldier is not receiving BAQ-WITH based solely on the support of the child.

b. Example 2. A woman in the FRG obtains a judgment in an FRG court, as a result of a paternity action, declaring a soldier to be the father of the woman's child and ordering him to pay 500 German marks per month in support of the child. The FRG court acquired jurisdiction over the soldier, who is assigned for duty within the FRG, in accordance with one of the methods indicated in paragraph 1-8 *a*(1). The soldier is required by paragraphs 2-2*a*, 2-4, and 2-5*a* (1) of this regulation to provide financial support to the child in the dollar equivalent of 500 German marks per month. In addition, the soldier while stationed in Germany may have the dollar equivalent of 500 German marks withheld from his pay each month if he fails to voluntarily comply with the FRG court order (by virtue of the U.S. Army honoring and implementing the FRG court garnishment order pursuant to the governing status of forces agreement).

c. Example 3. Assume the same facts as in Example 2 of this paragraph, except that now the soldier, pursuant to his request, has requested to be reassigned to an Army installation in Panama. The soldier, if assigned to Panama, would have no legal obligation to provide financial support to this child under this regulation. However, if the mother obtains a judgment in a U.S. state court recognizing and enforcing the FRG court order, then the soldier would be required to comply with that court order under paragraphs 2-4 and 2-5*a*(1). With a recognized court order, the mother could also obtain the dollar equivalent of 500 German marks through a court-ordered garnishment of the soldier's pay. However, obtaining a court order in the United States against a soldier while he is stationed outside the United States is difficult, time-consuming, and expensive. Pursuant to paragraph 1-5 *e*, Army officials have an obligation, if consistent with other military requirements, to disapprove the soldier's request for reassignment to Panama when they are on notice that his continued assignment outside the United States will adversely affect the legal rights of another. The soldier should be reassigned to the United States, if consistent with other military requirements, unless the paternity case is resolved in a court within the United States.

d. Example 4. A woman, who has a child born out of wedlock, subsequently marries a soldier she claims was the father of the child. There was no court order regarding paternity of the child prior to the marriage. The soldier and his wife subsequently separate, and the wife, together with the child, move into a private apartment. The soldier claims that he is not the biological father of the child. The soldier also claims that the wife's income exceeds his military pay. The soldier's subsequent marriage to the mother of the child has no effect on the soldier's obligation to provide financial support to that child under the regulation. The soldier has no obligation to provide financial support to the child in the

absence of a court order or a legal adoption of the child. (See para 2–2.) Pursuant to paragraph 2–11b(3), the soldier’s battalion commander may release the soldier from the regulatory obligation under para 2–5a(3) and 2–6 to provide financial support to his wife if he or she is satisfied by a preponderance of the evidence that the wife’s monthly income exceeds the monthly military pay of the soldier and the soldier is not receiving BAQ-WITH solely on the basis of providing financial support to that spouse.

B–2. Financial support by oral financial support agreement (para 2–3a)

a. Example 1. A soldier’s wife and child move out of government family quarters. There is no court order. She and the child move into her parents’ home in another state. In a letter to the soldier’s commander, the wife complains that the soldier orally agreed to provide her an amount that exceeds the soldier’s BAQ-WITH. In response to the commander’s questions, the soldier states that the agreed amount was less than BAQ-WITH. In accordance with paragraphs 2–3a, 2–5a(3), and 2–6, the commander should direct the soldier to send his wife BAQ-WITH.

b. Example 2. Assume the same facts as above, except in this case the soldier, in response to the commander’s questions, shows the commander a copy of a letter he wrote and sent to his wife in which he offered to pay his wife an amount less than BAQ-WITH. Unless the soldier can present a signed letter from his wife agreeing, in unequivocal language, that payment of that amount is acceptable, the commander should direct the soldier to send his wife BAQ-WITH. If the soldier presents a signed letter from his wife agreeing, in unequivocal language, that payment of the lesser amount is acceptable, the commander should direct the soldier to pay that amount in accordance with paragraphs 2–3b and 2–5a(2).

B–3. Financial support by written financial support agreement (para 2–3b)

a. Example 1. A soldier’s wife and two children reside in government family quarters. The soldier and his wife have both signed a marital separation agreement in which the soldier has agreed to pay his wife spousal and child support in an amount equal to twice his BAQ-WITH. The soldier now refuses to pay the full amount of support stated in the agreement because his family has not yet vacated government family quarters. The wife complains to her husband’s commander. The commander should direct the soldier to pay the amount stated in the agreement. The soldier’s failure to move his family out of government family quarters is unrelated to his financial support obligation in the absence of a provision in the marital separation agreement to the contrary.

b. Example 2. A soldier and his wife sign a marital separation agreement which provides that she will receive financial support in an amount equal to one-half of the soldier’s BAQ-WITH until she remarries. The soldier has no children. Thereafter, the wife obtains a divorce decree that does not reference the marital separation agreement. No alimony was ordered by the court. She now complains to the soldier’s commander that she is not receiving financial support as provided in the agreement. In accordance with paragraph 2–3b (2)(a) the soldier is not required by this regulation to provide financial support to his wife since the agreement was not incorporated in the divorce decree. Upon divorce she is no longer a family member under the regulation nor is she entitled to financial support in the absence of a court order. The result is the same if the court was without jurisdiction to order the soldier to pay alimony.

B–4. Financial support by court order (para 2–4)

a. Example 1. A soldier’s wife separates from her husband. At the time of separation they resided in Virginia, where the soldier is assigned for military duty. The soldier is also domiciled in Virginia. She returns, together with their one child, who was born in Virginia, to the home of her parents in the FRG. The soldier obtains an *ex parte* divorce from his wife in the United States. The court does not order financial support, and there is no written financial support agreement. She now requests through her husband’s commander in Virginia that she be provided BAQ-WITH for herself and their child. The soldier has one family member (the child) to support. In accordance with paragraph 2–6b, c, and d(3), the commander should direct the soldier to provide his child BAQ-WITH.

b. Example 2. Assume the same facts as above, except in this case the wife also has obtained a divorce decree in an FRG court. The FRG court has also issued an order, mailed to the soldier in the United States, directing him to pay child support in an amount equal to twice his BAQ-WITH. In accordance with paragraph 2–6b , c, and d(3), the commander should direct the soldier to pay BAQ-WITH unless the FRG court order has been recognized and enforced by a court within the United States. (See the definition of a court order in the glossary, and para 2–4b and d.)

c. Example 3. Assume the same facts as in the two examples above, except in this case the soldier has also obtained an *ex parte* court order in Virginia granting legal and physical custody of his child to him. The child remains with the mother in Germany. The battalion commander may release the soldier from the obligation to provide financial support to his child if the commander is satisfied, based on the court order, that the soldier is the lawful custodian of the child; the child, without the soldier’s consent, is in the physical custody of another who is not the lawful custodian of the child; and the soldier is diligently pursuing legal means to obtain physical custody of the child. (See the definition of a court order in the glossary, and para 2–11b(6).)

B–5. Financial support in single family units (para 2–6d)

a. Example 1. Husband and wife, both soldiers, have three children. One child resides with the husband and two

reside with the wife. There is no court order or written financial support agreement. Neither spouse has a financial support obligation to the other under this regulation. (See para 2-6d(4)(b).)

b. Example 2. Assume the same facts as in Example 1 of this paragraph except that all three children reside with the husband, and the wife, now residing in a private apartment, is being paid BAQ-WITH by the Army. Pursuant to paragraphs 2-5a(3) and 2-6d(4)(a), the wife must pay BAQ-DIFF to her husband on behalf of the children. If the wife fails to pay this amount, she may, in addition to receiving disciplinary action, lose her entitlement to BAQ-WITH. (In this case, DFAS may cancel her entitlement to BAQ-WITH and recoup past payments of BAQ-DIFF because she is providing less than adequate financial support to her family members, and therefore is only entitled to BAQ-WITHOUT. See para 1-7c(1).)

c. Example 3. A wife separates from her husband, who is a soldier, during the month of July and moves out of government family housing into an apartment of her own. There is no court order or written financial support agreement. Since the soldier will be paid in full for the month of July not later than the first day of August, the soldier must mail a check or money order for an amount equal to no less than his BAQ-WITH to his wife for the month of July not later than the first day of August. If he decides to pay her in cash, he must personally deliver the cash to her not later than the first day of August. (See paras 2-5a(3), 2-6 d(1), and 2-7b and c .)

d. Example 4. A husband separates from his wife, who is a soldier, during the month of April and moves out of their non-government housing into an apartment of his own. Their child is in the temporary custody of the wife's mother. There is no court order or written financial support agreement. Since the soldier will be paid in full for the month of April not later than the first day of May, the soldier must mail or deliver an amount equal to no less than one half of her BAQ-WITH to her husband and one-half of her BAQ-WITH to her mother on behalf of the child not later than the first day of May. (See paras 2-5a(3), 2-6b and d(3), and 2-7b and c.)

e. Example 5. A wife separates from her husband, who is a soldier, and moves out of government family housing into an apartment she shares with another man. The wife and husband have two children. One child resides with the wife and the other with the husband. There is no court order or written financial support agreement. The soldier has a total of three family members. Under paragraph 2-10a and d, the soldier's commander may not release the soldier from the requirement of this regulation to provide financial support to his wife due to alleged (or established) marital misconduct on the part of the wife. The soldier must support the child in government family housing. In addition, the soldier must provide two-thirds of BAQ-WITH to his wife for the support of herself and their child who resides with her. (See paras 2-5a(3), and 2-6b and d(2) and (3).)

f. Example 6. Assume the same facts as in Example 5 of this paragraph except that the wife and child move into government family housing with the wife's father, who is also in the military. Pursuant to paragraph 2-6d(2) the husband must provide BAQ-DIFF to the family unit (wife and child) residing in government family housing.

B-6. Financial support in multiple family units (para 2-6e)

a. Example 1. A soldier is divorced and has three children from that marriage. The soldier is required by a court order to pay \$300 per month in financial support for these children and \$100 per month in alimony to his former wife. The soldier has remarried and has two more family members (spouse and child) living in non-government housing. There is no court order or written financial support agreement pertaining to the soldier's second marriage. The soldier now has a total of five family members for whom he is required to provide financial support under this regulation. (Pursuant to para 2-6b and c(1) a former spouse is not considered a family member in determining the pro-rata shares of BAQ-WITH of family members.) In accordance with the court order, the soldier must pay a total of \$400 to his former wife and to the children from that marriage. He must also provide financial support to his present wife and their child in an amount equal to two-fifths of BAQ-WITH. (See paras 2-5a (1) and (3), and 2-6b, c (1), and e.)

b. Example 2. A soldier in the Illinois National Guard has one child from a previous marriage. There is no written financial support agreement. The court that granted the soldier a divorce did not have personal jurisdiction over his former spouse to decide such issues as custody or financial support of the child. The soldier has remarried and has a spouse and two children living in non-government housing. There is no court order or written financial support agreement pertaining to the soldier's second marriage. The soldier has been called up for active duty pursuant to Title 32, U.S. Code. Under the regulation the soldier has no financial support obligation, even if his active duty extends beyond 29 days. Members serving under Title 32 are subject to state law, not this regulation. If, however, the soldier was called up for active duty for more than 29 days pursuant to orders issued under the authority of Title 10, U.S. Code, then this regulation would apply to him. In that event, the soldier would have a total of four family members for whom he must provide financial support under this regulation. (These family members are the child by a previous marriage and the present spouse and two children.) Each family member should receive financial support equal to one-fourth of BAQ-WITH. (See paras 2-5a(3) and 2-6b, c(1),d(2), and e (1).)

c. Example 3. A soldier has two children from a previous marriage. The soldier is required by court order to pay \$200 per month for these children. Also, the soldier is required to pay \$75 per month for support of another child in accordance with a court order declaring him to be the father of that child. He has remarried and has a spouse and three children residing in government family housing. There is no court order or written financial support agreement pertaining to the soldier's second marriage. The soldier now has a total of seven family members that he must support under this regulation. In accordance with the court orders he must pay the children from his previous marriage \$200

per month and the other child \$75 per month. He must pay his spouse and the children from his present marriage BAQ-DIFF. (See paras 2-5a (1) and (3), and 2-6b, c (1), d(2), and e(1).)

d. Example 4. A soldier is married to a woman in the Air Force. They have two children from this marriage, both of whom reside with the wife in government housing. The soldier has moved out of the government housing. There is no court order or written financial support agreement pertaining to the marriage. The soldier adopted a child during a previous marriage, who resides with his former spouse, for whom he is required by court order to pay \$150 per month. The soldier has a total of three family members for whom he is required to provide financial support. The soldier will pay \$150 per month in accordance with the court order for the adopted child. On behalf of the two children from his current marriage, he will pay BAQ-DIFF. Under paragraph 2-6d(4) the soldier has no financial support obligation to his wife, and she is not counted in determining the pro rata shares of the supported children. The financial support obligation of the wife to her family members is determined in accordance with Air Force instructions. (See paras 2-3b(2)(a), 2-5a(1) and (3), and 2-6d(4) and e (2).)

B-7. Release from regulatory requirements (para 2-11)

a. Example 1. A married soldier claims that she has been physically abused by her husband. They have no children. She moves out of their rented apartment and into another apartment of her own. He now seeks financial support from her through her commander. She is required by paragraphs 2-5a(3) and 2-6b and d(1) to provide BAQ-WITH to her husband each month. Under paragraph 2-10d, the alleged misconduct of the husband is not a basis for the soldier to refuse to provide financial support to her husband. Pursuant to paragraph 2-7d, she may, if she signed the lease of the apartment in which her husband is now residing, pay all or part of the rent on that apartment, up to the BAQ-WITH amount, instead of making direct financial support payments to her husband. To the extent that the rent is less than BAQ-WITH, she would have to pay the difference to her husband.

b. Example 2. Assume the same facts as in Example 1 of this paragraph. However, in this example, a family advocacy case management team has substantiated an instance of physical abuse by the husband against the soldier. Based on this finding, the battalion commander may release the soldier from the requirement to provide financial support to her husband. The battalion commander, however, must first ascertain that the soldier is not drawing any more than BAQ-WITHOUT. If she is receiving BAQ-WITH based solely on the support of her husband, then she must continue to provide BAQ-WITH to her husband.

c. Example 3. Assume the same facts as in Example 1 of this paragraph. However, in this example, the husband's monthly income exceeds the monthly military pay of the soldier. If the commander is satisfied by a preponderance of the evidence based on the commander's review of the evidence (for example, pay vouchers, a copy of the family's joint income tax return) that the husband's monthly income exceeds the soldier's monthly military pay, he may, pursuant to paragraph 2-11b(1), release the soldier from the requirement to provide financial support to her husband. The commander, however, must first ascertain that the soldier is not drawing any more than BAQ-WITHOUT. If she is receiving BAQ-WITH based solely on the support of her husband, then she must continue to provide BAQ-WITH to her husband.

d. Example 4. Assume the same facts as in Example 1 of this paragraph. However, in this example, the soldier has obtained a restraining order against her husband based on his alleged abusive behavior toward her. The battalion commander may, pursuant to paragraph 2-11b(4), release the soldier from the requirement to provide financial support to her husband if the commander is satisfied by a preponderance of the evidence that the husband physically abused the soldier, that this abuse is the basis for the restraining order against the husband, that this instance of abuse did not involve a mutual affray or an act of physical abuse by the soldier against the husband (substantiated by a family advocacy case management team or court judgment or order), and that the soldier is not receiving BAQ-WITH solely on the basis of providing financial support to that spouse. If she is receiving BAQ-WITH based solely on the support of her husband, or the restraining order is no longer in effect, or the abuse involved a mutual affray, then she must continue to provide BAQ-WITH to her husband.

e. Example 5. A soldier is sued by her former husband for custody of their two children. She loses in a contested case. Her former husband now seeks financial support through her commander from her on behalf of their two children. If the battalion commander is satisfied by a preponderance of the evidence based on the commander's review of the evidence (for example, review of the court papers following consultation with the SJA) that the husband could have also asked the court for financial support of the children during the child custody proceeding, the commander may, pursuant to paragraph 2-11b(2), release the soldier from the obligation to provide financial support to her children since the court order (that is, the child custody order) does not contain a financial support provision. The commander, however, must first ascertain that the soldier is not drawing any more than BAQ-WITHOUT. If she is receiving BAQ-WITH based solely on the support of her children, then she must continue to provide BAQ-WITH to her husband on behalf of their children.

Glossary

Section I Abbreviations

APF

appropriated funds

ARNG

Army National Guard

BAQ

basic allowance for quarters (at either the with or without dependents rate)

BAQ-DIFF

difference in amount between the basic allowance for quarters at the with dependents rate and basic allowance for quarters at the without dependents rate

BAQ-WITH

basic allowance for quarters at the with dependents rate

BAQ-WITHOUT

basic allowance for quarters at the without dependents rate

CG

Commanding General

DA

Department of the Army

DFAS

Defense Finance and Accounting Service

DOD

Department of Defense

DoDPM

Department of Defense Military Pay and Allowances Manual (Vol 7A of the Department of Defense Financial Management Regulation, DOD 7400.14-R)

DSN

Defense Switch Network

FAO

finance and accounting office

FRG

Federal Republic of Germany

GCMCA

general court-martial convening authority

HQDA

Headquarters, Department of the Army

ID cards

identification cards

IG

inspector general

LAAWS

Legal Automation Army-Wide System

LES

leave and earnings statement

NAF

nonappropriated fund

NATO

North Atlantic Treaty Organization

OTJAG

Office of The Judge Advocate General

PCS

permanent change of station

SJA

staff judge advocate

SRP

soldier readiness program

SSN

social security number

TDY

temporary duty

TJAG

The Judge Advocate General

TAPC

Total Army Personnel Center

UCMJ

Uniform Code of Military Justice

USAR

U.S. Army Reserve

VHA

variable housing allowance

Section II**Terms****Arrearage**

The total amount of money a soldier may owe a family member for prior months in which the soldier failed to comply with the financial support requirements of this regulation.

Basic allowance for quarters

A specific amount of money prescribed by law that a soldier, based on his or her pay grade, is authorized to receive each month under certain circumstances, regardless of duty location, when the soldier or his or her family member(s) are not occupying government family or other government housing. Basic allowance for quarters is authorized at either the with dependents rate or at the without dependents rate. Except as indicated in this regulation, the authorization or receipt of basic allowance for quarters, or the occupancy or non-occupancy of government family or other government housing has no effect on the obligation of soldiers to provide financial support to their family members under this regulation.

Battalion commander

The officer in the soldier's chain of command who is in command of an Army battalion or battalion-size or equivalent unit or activity. Such officer usually exercises summary court-martial jurisdiction and/or field-grade UCMJ, Art. 15 authority over assigned or attached soldiers. With regard to soldiers assigned or attached for duty to U.S. Navy, U.S. Air Force, or other U.S. military installations or to joint activities, the battalion commander is the officer exercising field-grade UCMJ, Art. 15 authority over those soldiers.

Child custody

The physical custody of a child or children. Child custody does not include visitation.

Command sponsorship

Personal transportation, transportation of household goods, government family housing, banking privileges, dependent schools, post exchange and commissary privileges, and other logistical support (except for medical care) provided by the Army or one of the other military departments to a soldier's family members residing outside the United States because of the soldier's military assignment to a unit located outside the United States.

Company Commander

The first officer in the chain of command who could exercise Article 15, UCMJ authority over the soldier.

Continuing violation

A violation of any provision of this regulation by a soldier that extends beyond a period of six consecutive months, regardless of whether the soldier has been previously counselled or punished for violating this regulation.

Court order

a. As used in this regulation, a court order includes any final, temporary, or interlocutory order, including an *ex parte* order, issued by a court within the United States, by a judge or any other judicial official, such as a judge *pro tem*, magistrate, commissioner, or master, on any of the following or related matters:

(1) Directing or denying financial support, or that is silent on the issue of financial support.

(2) Granting or denying child custody or visitation, as well as restraining orders and injunctions preventing contact with present (or former) spouses and other family members.

(3) Identifying a person as the father of a child or directing that person to provide financial support on behalf of the child.

(4) Directing a person's arrest, finding a person in contempt of court, or directing a person to show cause why he or she should not be held in contempt of court, for a violation or other conduct relating to any of the foregoing matters.

b. A court order also includes a stay of a court order on any of the foregoing matters.

c. With regard to financial support or paternity, a court order also includes an order, recognized as valid and enforceable under applicable state law, issued by an authorized official of a child support enforcement agency.

d. A court order also includes an order signed by a judge directing the release of information from a system of records.

e. Unless the context indicates otherwise, a court order does not include a foreign court order except in the following situations:

(1) The foreign court order has been recognized and enforced by a court within the United States; or

(2) The United States has agreed in a treaty or international agreement to honor valid court orders entered by courts of a particular foreign nation. (For the purpose of this provision, a court order includes one issued by an FRG court with regard to a soldier assigned for duty within the FRG, or a family member residing within the FRG.)

f. Notwithstanding the foregoing, a foreign court order adjudging a divorce, even though not recognized and enforced by a court within the United States or honored as valid by treaty or international agreement, is presumed valid, for the purpose of this regulation, with regard to the divorce and the termination of any obligation to provide financial support to a former spouse in accordance with this regulation. This presumption is rebutted if the foreign court order of divorce has been declared invalid by a court within the United States.

g. A court order is effective on the date of the order unless otherwise indicated in the order or by applicable law or court rule.

h. A court order is presumed valid in the absence of evidence to the contrary.

Divorce

A final decree of divorce or dissolution of marriage, as opposed to limited divorce, legal separation, or so-called divorce from table and bed, or bed and board, that completely severs the marital relationship. A divorce includes an annulment.

Divorce decree

A court order granting a divorce.

Family member

For the purpose of this regulation only, a family member includes—

- a. A soldier's present spouse. (A former spouse is not a family member. However, except as otherwise indicated, the term "family member" includes any former spouse for whom the soldier is required by any court order to provide financial support.)
- b. A soldier's minor children from present and former marriages, including children legally adopted by the soldier. (A family member does not include the child of a soldier who has been legally adopted by another person.)
- c. Minor children born out of wedlock to—
 - (1) A female soldier.
 - (2) A male soldier if evidenced by a court order identifying the soldier as the father and ordering the soldier to provide financial support.
- d. Any other person (for example, parent, stepchild) for whom the soldier has a legal obligation to provide financial support under the applicable law.

Family unit

For the purpose of this regulation, a family unit includes any of the following:

- a. A soldier's present spouse, together with any children from that marriage, for whom the soldier is required to provide financial support.
- b. One or more children from a prior marriage for whom the soldier is required to provide financial support.
- c. One or more children born out of wedlock from a prior relationship for whom a soldier is required to provide financial support.

Felony

A criminal offense that is punishable by incarceration for more than one year, regardless of the sentence that is actually imposed for commission of that offense.

Financial support

The amount of money or support in kind provided to one's family members on a periodic or other continuing basis in accordance with a written or oral support agreement, court order, or this regulation. Financial support includes court-ordered spousal support (or alimony) and child support, but does not include any division of marital or nonmarital property between spouses or former spouses, or financial payments made as part of a property settlement.

Financial support agreement

An oral or written agreement between husband and wife to provide financial support. A written financial support agreement is any written document, such as a separation agreement or property settlement agreement, or a series of letters, signed by the parties, evidencing an agreement to provide financial support. A written financial support agreement also includes a written agreement expressly relieving a soldier of the obligation to provide financial support to a spouse.

Financial support provision

The provision in a court order or separation agreement directing the soldier to provide financial support to a family member or denying or waiving such support.

Financial support requirement

The amount of financial support a soldier is required to pay to his or her family members under this regulation.

General court-martial convening authority

The Army officer who, by virtue of command, exercises general court-martial convening authority over a soldier who (or whose family member) is the subject of a request for assistance from a government official, or the subject of any inquiry received under this regulation.

Geographically separated family member

A situation in which a soldier is assigned at an installation different from the one at which his or her family member is attempting to obtain assistance under this regulation.

Government family housing

Any government-owned or government-leased housing occupied by a military member and one or more of his or her

family members for which, because of such occupancy, the military member loses entitlement to BAQ under the Department of Defense Pay Manual.

Income

The gross income of a non-service member spouse from his or her wages, before deductions are taken for taxes, voluntary allotments, and garnishments, together with income from all other sources, such as interest, dividends, and profits derived from property in that spouse's possession.

Inquiry

A telephone call, letter, facsimile transmission, or other form of communication requesting information, expressing dissatisfaction, stating a protest, making a complaint or claim for money, or asking for other relief about financial support, child custody or visitation, paternity, or related case involving a soldier or family member that is addressed, forwarded, or otherwise communicated to Headquarters, Department of the Army (HQDA), or any subordinate command or activity.

Interlocutory order

Any court order, such as a provisional or temporary order, which is not a final decision on the whole controversy.

Lawful custodian

A person authorized, either alone or together with another person or persons, to have physical custody of a child less than 14 years of age by court order. In the absence of a court order to the contrary, the mother of a child born out of wedlock is deemed the "lawful custodian" of that child for the purpose of this regulation.

Legal assistance

Legal advice, counseling, and other help provided to eligible clients on their personal legal affairs under AR 27-3 or comparable regulations or instructions of the Air Force, Navy, Marine Corps, or Coast Guard.

Legal assistance attorney

A judge advocate, or civilian attorney employee within the Department of Defense, who, as to a particular case, is providing legal assistance to an eligible client pursuant to AR 27-3 or comparable regulations or instructions of the Air Force, Navy, Marine Corps, or Coast Guard.

Military pay

The basic pay authorized under the law for a soldier based on his or her pay grade and time in service before deductions are taken for taxes, voluntary and involuntary allotments, garnishment, and other such matters. Military pay does not include military allowances or wages from off-duty employment.

Minor children

Unmarried children under 18 years of age who are not on active duty with the Armed Forces.

Multiple family units

Two or more family units.

Non-government housing

Any housing that is not government housing.

Personal jurisdiction

The power of a court over one of the parties in a case to order one of the parties to pay financial support to his or her family members, or to direct one of the parties to do an act or refrain from doing an act (for example, relating to child custody or visitation, physical restraining orders) under sanction of the court's contempt power. Due process requirements of notice and opportunity to be heard must be satisfied. The usual manner of obtaining personal jurisdiction over a party is by serving process on the person of the party, or by certified mail, return receipt requested.

Preponderance of the Evidence

The degree of proof which leads one to find that the existence of a fact in issue is more probable than not.

Release

The action of a battalion commander pursuant to this regulation that excuses a soldier from a specific requirement of this regulation.

Repeated violation

A second or subsequent violation of any particular provision of this regulation within a twelve month period by a soldier who has been previously counselled or punished for violating this regulation.

Request for assistance

A request for help in a financial support, child custody or visitation, paternity, or related case made to the Army by a U.S. Federal, State, or local government official about enforcing a court order from a court within the United States against a soldier or family member who has been charged with, or convicted of a felony, or held in contempt of court for failure to obey the court's order, or has been ordered to show cause why he or she should not be held in contempt for failing to obey the court's order.

Soldier

As used in this regulation, the term "soldier " includes all male and female commissioned officers, warrant officers, and enlisted personnel. For the purpose of this regulation this term also includes cadets at the U.S. Military Academy. The term also includes Army personnel confined at the U.S. Disciplinary Barracks or other confinement facilities who are receiving full or partial pay and allowances.

Soldier readiness program

An Army program that establishes a set of administrative requirements that must be met before individual soldier or unit movement, both during peacetime and mobilization. This program replaces the preparation of replacements for overseas movement (POR) qualification.

Sponsor

A soldier whose family members are entitled to command sponsorship.

Staff judge advocate

The principal legal advisor on the staff of an active component commander who possesses general court-martial convening authority. As used in this regulation, this term also includes command judge advocates and post judge advocates, and other attorneys officially acting in their behalf. As to any client, this term does not include an attorney providing legal assistance to that client.

State court

Any court within the 50 states, the District of Columbia, Puerto Rico, Guam, the Northern Mariana Islands, American Samoa, or the Virgin Islands.

System of records

A group of records under the control of DA from which information is retrieved by the individual's name or by some identifying number, symbol, or other identifying particular assigned to the individual.

United States

The 50 States, the District of Columbia, Puerto Rico, Guam, the Northern Mariana Islands, American Samoa, and the Virgin Islands.

Variable housing allowance

An amount of money prescribed by law that a soldier receives to defray high non-government housing costs in the continental United States.

Section III**Special Abbreviations and Terms**

This section contains no entries.

Index

This index is organized by topic and subtopic. Topics and subtopics are identified by paragraph number.

Appropriated fund employee, 4-1

Arrearage, 2-3, 2-5, 3-9

Basic allowance for quarters, 1-7, 2-2, 2-6, 2-11, 3-2, 3-6, 3-7

Battalion commander, 1-4, 2-6, 2-10, 2-11, 3-1, 3-3, 3-4, 3-5, 3-6, 3-7, 3-8

Child(ren)

generally, 1-7, 1-8, 2-3, 2-6, 2-7, 2-8, 2-9, 2-11, 3-2, 3-3, 3-6, 3-8, 3-9, 3-10, 4-3, 5-2

born out of wedlock, 1-9, 2-2, 3-7

Child custody, 1-1, 1-4, 1-5, 1-9, 2-1, 2-6, 2-7, 2-8, 2-9, 2-10, 2-11, 3-5, 3-8, 3-9, 3-10, 4-1, 4-2, 4-3, 5-2

Command briefings, 5-1, 5-2, 5-3

Command sponsor (sponsorship), 1-4, 3-10

Company commander, 1-4, 3-1, 3-3, 3-4, 3-5, 3-6, 3-7, 3-8, 4-3

Counseling soldiers, 1-4, 1-6, 1-8, 3-2, 3-3, 3-4, 3-5, 3-10, 5-2

Court order

generally, 1-1, 1-4, 1-7, 1-8, 2-2, 2-3, 2-4, 2-5, 2-6, 2-7, 2-8, 2-9, 2-10, 2-11, 3-7, 3-9, 3-10, 4-1, 4-2, 4-3, 4-4, 5-2

by a U.S. (state) court, 1-4, 2-4

by a foreign court, 2-4

Defense Finance and Accounting Service, 1-7, 1-8

Department of Defense Military Pay and Allowances Entitlements Manual (DODPM), 1-7

Deployment, 5-1, 5-3

Divorce, 1-7, 2-3, 2-11

Enforcement, 1-4, 1-8, 2-3, 2-5, 3-5, 3-9, 3-10

Family member, 1-1, 1-4, 1-5, 1-6, 1-7, 1-8, 1-9, 1-10, 2-1, 2-2, 2-3, 2-6, 2-7, 2-10, 2-11, 3-1, 3-3, 3-5, 3-6, 3-7, 3-9, 3-10, 4-1, 4-2, 4-3, 5-2

Family unit (single or multiple), 2-6

Federal Republic of Germany, 1-8, 2-4

Finance and accounting office, 2-2, 3-6, 3-7

Financial support

generally, 1-1, 1-4, 1-5, 1-7, 1-8, 1-9, 2-1, 2-2, 2-3, 2-4, 2-5, 2-6, 2-10, 2-11, 3-6, 3-7, 3-9, 3-10, 4-1, 4-2, 5-2

agreements (oral or written), 2-3, 2-5, 2-6, 2-7, 2-10, 2-11

payments, 2-7, 3-6

payments in kind, 2-7

provisions, 2-2, 2-4, 2-5, 2-6, 2-11

requirements, 1-7, 2-3, 2-5, 2-7, 2-11, 3-10

Garnishment, 1-8, 2-7, 3-5

General court-martial convening authority, 1-4, 4-3, 4-4

Geographically separated family member, 1-4, 2-1

Government family housing

generally, 1-5, 1-7, 2-6

records, 3-8

Identification card, 3-7

Income, 2-11

Inquiry, 1-4, 1-10, 1-11, 2-1, 2-2, 3-1, 3-2, 3-3, 3-4, 3-5, 3-6, 3-7, 3-8, 3-9, 4-2, 5-2

Involuntary allotment, 1-8, 2-7

Jurisdiction

generally, 1-8, 2-10, 2-11, 3-2, 3-7, 3-10, 4-2, 4-3

foreign, 2-4

personal, 2-11

Lawful custodian, 2-9, 2-11, 3-3, 3-8, 3-9, 5-2

Leave and earnings statement, 3-6
Legal Automation Army-Wide System, 1-4, 1-10
Legal assistance, 1-4, 1-9, 1-10, 1-11, 2-1, 3-4, 3-7
Legal assistance attorney, 3-5, 3-6, 3-8
Military pay, 1-8, 2-1, 2-11
Message, 1-4, 3-5
Mobilization, 5-1, 5-3
Nonappropriated fund employee, 4-1
Non-government housing, 2-7
North Atlantic Treaty Organization, 1-8
Office of The Judge Advocate General, 1-4, 1-10
Paternity, 1-1, 1-4, 1-5, 1-9, 2-2, 2-10, 2-11, 3-7, 3-9, 4-1, 4-2, 5-2
Penalties, 1-6
Permanent change of station, 4-3, 5-1, 5-3
Questioning soldiers, 3-2, 3-3, 3-4, 3-7
Records, 1-11, 3-2, 3-5, 3-8, 3-10
Release
 to host-nation authorities, 3-10
 of information, 1-4, 1-11, 3-2, 3-5
 from regulatory requirements, 1-4, 2-6, 2-10, 2-11
Request for assistance, 1-4, 4-1, 4-2, 4-3, 4-4
Social security number, 3-1
Soldier readiness program, 5-1, 5-3
Staff judge advocate, 1-4, 1-10, 2-10, 3-2, 3-4, 3-6, 3-8, 3-10, 4-3, 5-2
Temporary duty, 4-3
The Judge Advocate General, 1-4
Total Army Personnel Center, 1-4
Uniform Code of Military Justice, 1-4, 1-6, 3-3, 3-10, 4-3, 4-5, 5-2
Variable housing allowance, 1-7
Violations (continuing or repeat), 1-4, 1-5, 3-1, 3-4, 3-6, 3-10
Visitation, 1-1, 1-4, 1-5, 1-9, 2-1, 2-8, 2-9, 2-10, 2-11, 3-5, 3-8, 3-9, 4-1, 4-2, 4-3, 5-2
Voluntary allotment, 2-1, 2-7, 3-3, 3-6, 3-7, 5-2, 5-3

RESERVED

**AUTHORIZATION TO RELEASE INFORMATION FROM ARMY
RECORDS ON NONSUPPORT/CHILD CUSTODY/PATERNITY INQUIRIES**

For use of this form see AR 608-99; the proponent agency is OTJAG

DATA REQUIRED BY THE PRIVACY ACT OF 1974

AUTHORITY	Title 10, USC, Section 3013
PRINCIPAL PURPOSE	To obtain your approval to release personal information from your military records (DoD finance, Army personnel and unit records) to reply to inquiries concerning nonsupport/child custody/paternity.
ROUTINE USES	The personal information from your military records will be used to reply to inquiries concerning nonsupport/child custody/paternity. This information also may be used to determine the amount of financial support you should be providing to your family members. It also may be used to support administrative or disciplinary action, if appropriate. If you authorize the release of personal information from your military records that information may be used, where relevant, together with any other information you provide, to answer inquiries concerning nonsupport/child custody/paternity.
DISCLOSURE	Your decision on whether or not to authorize the release of personal information from your military records is voluntary. If you do not authorize the release of personal information, this may affect efforts to provide complete information in response to inquiries concerning nonsupport/child custody/paternity.

- ☐ I do *not* authorize the release of any personal information from my military records to respond to persons or agencies outside the Department of Defense on nonsupport/child custody/paternity inquiries.
- ☐ I hereby authorize the release of personal information (except as indicated below) from my military records to respond to persons or agencies outside the Department of the Defense on nonsupport/child custody/paternity inquiries.

SIGNATURE OF SOLDIER

DATE

UNCLASSIFIED

PIN 004407-000

USAPA

ELECTRONIC PUBLISHING SYSTEM

OneCol FORMATTER .WIN32 Version 1.12

PIN: 004407-000

DATE: 07-11-00

TIME: 14:28:36

PAGES SET: 41

DATA FILE: C:\WINCOMP\mark.fil

DOCUMENT: AR 608-99

DOC STATUS: REVISION